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Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Summary and recommendations of the report of the mission of the Permanent Forum on Indigenous Issues to Paraguay**

Summary

In response to a request from the Government of Paraguay, the Permanent Forum on Indigenous Issues organized a multi-agency mission to Asunción and Filadelfia in April 2009 to verify complaints regarding forced labour and servitude among communities of Guaraní peoples and to draw up proposals and recommendations to ensure that the fundamental rights of indigenous peoples are respected. The full report of the mission was presented to the Government on 31 August 2009. The present report contains a summary of the full report.

* E/C.19/2010/1.

** The full report can be found on the website of the Permanent Forum on Indigenous Issues at http://www.un.org/esa/socdev/unpfii/en/news.html.

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I. Introduction

1. In response to a request from the Government of Paraguay, the Permanent Forum on Indigenous Issues organized a multi-agency mission to Asunción and Filadelfia in April 2009 to verify complaints regarding forced labour and servitude among communities of Guarani peoples and to draw up proposals and recommendations to ensure that the fundamental rights of indigenous peoples are respected. The mission was composed of the chairperson of the Permanent Forum, Victoria Tauli-Corpuz; members Lars Anders-Baer, Bartolomé Clavero and Carlos Mamani; and two officials of the Department of Economic and Social Affairs of the United Nations Secretariat, as well as experts from the United Nations Development Programme, the Food and Agriculture Organization of the United Nations (FAO), and the International Labour Organization (ILO) in both Paraguay and Peru.

2. The mission's mandate was established in a recommendation of the Permanent Forum at its seventh session, in May 2008 (see E/2008/43, para. 156), and confirmed in an invitation from the Government of Paraguay on 30 October 2008.

3. The present report is a summary of the full mission report, which is based on interviews conducted by the mission, inspections, data from the General Directorate of Statistics, Surveys and Censuses, documents of ILO and the United Nations Children's Fund (UNICEF) and materials from indigenous peoples' organizations and international and domestic non-governmental organizations (NGOs). Although the mission centred on the situation of the Guarani peoples, it also met with other indigenous communities and concluded that the problems encountered and the recommendations offered were relevant to several indigenous peoples in the Chaco region of Paraguay.

4. The mission visited communities in the Chaco region and met with representatives of indigenous organizations and of the Rural Association of Paraguay, the Ministers or Vice-Ministers of Education and Culture, Justice and Labour, Foreign Affairs, Agriculture and Livestock, and the Environment, representatives of commissions of Congress on human rights and indigenous affairs, the Supreme Court of Justice and the Office of the Public Prosecutor. The Permanent Forum is grateful for the trust placed in the mission by individuals, organizations and institutions.

5. At the eighth session of the Permanent Forum, members orally presented the recommendations contained in the present report. On the basis of the presentation, the Permanent Forum thanked the Governments of Paraguay and Bolivia for their invitations, welcomed the mission, which had been carried out pursuant to the Forum's recommendation regarding the situation of forced labour in Guarani communities at its seventh session, and decided to publish the reports of the mission as documents of the Forum. The Forum urged United Nations country teams to follow up on the recommendations and suggested to the relevant Governments that they report on the implementation of the recommendations at the ninth session of the Forum (E/2009/43, para. 94).

Note: Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses quoted herein have been kept anonymous. The Permanent Forum wishes to express its appreciation for the efforts of individuals and institutions which, by providing information, contributed to the mission.

II. Legal context

A. International law

6. Paraguay, by ratifying and supporting a series of international treaties and declarations of intergovernmental bodies, has undertaken to use its power to protect and give effect to human rights. This means not only ensuring that its officials comply with human rights standards, but also acting with due diligence to address abuses committed by non-State authorities and individuals. The principle of due diligence includes the obligation to prevent human rights violations, investigate them and punish them when they occur.

7. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007 (see resolution 61/295), sets out minimum standards for the recognition and protection of the rights of indigenous peoples in various contexts throughout the world. It includes provisions on the right to self-determination (arts. 3 and 4) and the right of indigenous peoples to own their lands and to recover their territories (arts. 8.2 (b), 25, 26 and 28). The Declaration calls upon States to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development (art. 17, para. 2) and provides that indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary (art. 17, para. 3).

8. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries recognizes that indigenous and tribal peoples have a wide range of rights, including rights to land and territory, access to natural resources, health, education, vocational training, conditions of employment and contacts across borders, and gives special attention to the protection of freedom of work, including an explicit prohibition of servitude and forced labour.

9. The Universal Declaration of Human Rights (art. 4), the International Covenant on Civil and Political Rights (art. 8) and the American Convention on Human Rights (art. 6) proscribe slavery and servitude. ILO Convention No. 29 concerning Forced or Compulsory Labour prohibits all forms of such labour.

B. Domestic law

10. The Constitution of Paraguay prohibits slavery, personal servitude and trafficking in persons (art. 10). It also establishes that everyone has the right to protection of their freedom and security and that no one may be compelled to do what is not ordered by law or be prevented from doing what is not prohibited by law (art. 9). The labour code establishes that work is a right and a social duty and enjoys the protection of the State. It may not be regarded as a commodity. It demands respect for the freedoms and dignity of those who perform work and shall be carried out in conditions that ensure life, health and an economic level consonant with the responsibilities of the working father or mother. No discrimination shall be exercised against workers for reasons of race, colour, gender, religion, political opinion or social standing. Concerning forced labour, the labour code stipulates that all work must be paid, that a contract will be void if it establishes a wage lower than

that paid to another worker in the same enterprise for work of equal effectiveness or sets a wage lower than the legal minimum; if it requires one day of work more than is permitted by the labour code; or if it entails a direct or indirect obligation to buy goods or food from a store, business or place determined by the employer (art. 47). However, as is demonstrated in the present report, the situation of indigenous peoples in the Chaco reveals serious violations of both domestic laws and international treaties signed and/or ratified by Paraguay.

III. Forced labour in indigenous communities in the Paraguayan Chaco

> Once we went to work for 800,000 guaranies. We thought that we would have a lot of money to live with, but I got nothing. The *provista* (basket of food and basic items) never lasted till the end of the month so we had to go for a few days without food. If we fell sick, we couldn't go out, we were like prisoners.
>
> Indigenous man in the Chaco, April 2009

> The Guaraní were the original settlers of these lands, and now you see we are the most marginal. Before we Guaraní were free, we were rich, and now we are treated like dogs.
>
> Indigenous teacher in the Chaco, April 2009

> Why do the Mennonites put the indigenous to work? Because they are docile, they don't know the law, they don't demand social security. If an indigenous person complains, they fire him. There are many more indigenous people. And when they grow old and slow, they are thrown out without compensation, and then they can hire someone younger.
>
> Government official, April 2009

11. The existence of forced indigenous labour in the Chaco region has been extensively documented in investigations and reports of NGOs, including Anti-Slavery International and ILO, which in July 2005 issued a report on debt bondage and marginalization, finding that some 8,000 indigenous people were in a situation of servitude in the Paraguayan Chaco.

12. In June 2008, the Government of Paraguay was called upon to give explanations before the Conference Committee on the Application of Standards of the International Labour Conference regarding systematic non-compliance with ILO Convention No. 29 following repeated comments by monitoring bodies. The Committee again urged the Government to put an end to debt bondage among the indigenous communities of the Paraguayan Chaco and other affected parts of the country. In early 2009, the Government took an important step towards addressing the issue by forming an inter-agency commission on fundamental rights and forced labour, which seeks to eradicate violations of fundamental rights in the labour sector.

13. The forced labour of indigenous peoples takes place in the context of the complex history and political economy of the Paraguayan Chaco. The Chaco — the "last frontier" of the Americas — is a region of late development where the lands were parcelled out to religious groups, primarily Mennonites from Europe; the lands

were "given" with the indigenous communities still living on them, and those communities were subsequently used as low-cost labour on the new ranches. Observing the thriving activities of the Mennonites, other Paraguayan ranchers moved to the Chaco, continuing the tradition of expropriating indigenous communities and exploiting indigenous labour.

14. The indigenous communities of the Chaco are consequently deprived of land and resources in their own territory. They live in extreme poverty and are compelled to support themselves by working for the Mennonite colonies and Paraguayan estates under precarious conditions, with no guarantee of stability, for low wages, without health insurance when they stop working and with no trade union rights. This situation is due in part to the weak presence of the State in the Chaco, together with the development model and the considerable power of the Mennonite communities in the region. As a result, indigenous servitude is entrenched in the Chaco, masked by the local and national authorities.

15. The Paraguayan State is reduced to bare essentials on account of its manifest lack of resources. Paraguay is one of the few places in the world where an income tax, the main mechanism for redistributing wealth, does not exist, and for this reason the State is unable to develop public policies for the bulk of its citizens. There is no land registry in Paraguay, which has made it easier for settlers to expropriate the land of indigenous communities.

16. According to studies carried out by the General Directorate of Statistics, Surveys and Censuses of Paraguay in 2008 and 2002, indigenous peoples represent 2 per cent of the overall population of Paraguay and 31 per cent of the population in its western region, which includes the Chaco. Indigenous peoples were not recognized in the Constitution until 1992, when a new Constitution identified indigenous peoples as "ethnic groups whose culture existed before the formation and constitution of the State of Paraguay" (art. 62). In spite of such recognition, official figures continue to reveal an alarming situation, marked by a high illiteracy rate, affecting 40 per cent of the indigenous population, with an average of three years' schooling for indigenous children aged 10 and over, as compared to eight years for the non-indigenous population. The problem is more acute in rural areas (53.3 per cent) than in urban areas (29.2 per cent); Guaraní communities have the worst illiteracy rates (45.5 per cent). Most indigenous people typically live in a modest earth-floor building with a straw or corrugated iron roof and wooden or adobe walls, with a small patch of land on which they grow food for themselves. Only 3.5 per cent of indigenous people have a brick house. The poor quality of housing is a major medical problem: the incurable Chagas' disease, which affects half the indigenous population, is transmitted by an insect that lives in this kind of housing. Only 5.9 per cent of indigenous homes have a bathroom or access to drinking water, and only 21 per cent have electricity, with most homes being lit by candles.

IV. Summary of the findings of the mission

17. The full report of the mission contains analyses of the situation of indigenous peoples in the Chaco region with respect to violations of different rights (forced labour, child labour, poor working conditions, the loss of, and consequent lack of access to, lands, the inadequate provision or complete lack of social services and

restrictions on the right to freedom of association). The conclusion is that a system of forced labour exists in the Chaco region, along with grave violations of international instruments supported or ratified by Paraguay. Because of those violations, as well as breaches of the Paraguayan labour and criminal codes, the Government must, as a matter of urgency, resolve the situation of the Guaraní and other indigenous peoples in the Chaco region with regard to the following issues noted by the mission, as set out below.

A. Existence of forced labour and servitude among indigenous men and women

> I worked in [place name omitted]; I was in great need and I drove a tractor for two months. After the first month, I was already in debt. I got paid only 450,000 guaranies a month.
>
> Indigenous man in the Chaco, April 2009

> The employers bring the indigenous workers to their lands and promise them work for a year or two, but when sometimes they work for six months without being paid, as the communities don't have enough food to eat, the Guaraní go on working for the employer.
>
> Interview with a Government official, April 2009

> The indigenous don't work, they just do what they like, they don't understand our hours or the concept of time, and they never understood the concept of work because they lived off the land ... How can we speak of forced labour when they're not even capable?
>
> Official of the national judicial system, April 2009

18. In Paraguay, forced labour comes into being in one of two ways. One way is when work that has been done is not paid for: this is a direct case of forced labour, and the mission received many reports to that effect. Another way is *empatronamiento* (being treated as part of the employer's property), servitude or *enganche* (improper hiring practices) of families or individuals based on accommodation on the ranch or on debts. Wages are very low and do not cover the basic needs of the families of indigenous workers, who live in extreme poverty. The indigenous people contract debts with their employers, who advance them their pay to meet the cost of building or fixing up a modest home, sending children to school, or simply buying food and clothing. The mission also received allegations of such cases as these. The situation is reportedly particularly bad for women in domestic service: the private sphere in which they perform their long days of work is often a world of subjection and abuse, and the mission received reports that women working in domestic service frequently do not receive monetary compensation, but merely bed and board.

B. Child labour

> Child labour is so widespread that in rural areas it seems normal to people that children work doing menial tasks. For example, if women have no one to look after their children, they take them out into the fields and the children help

> them all day long, but it isn't seen as work. Children are considered to work only when they get paid.
>
> United Nations official, April 2009

19. According to the second census of indigenous people, conducted by the General Directorate of Statistics, Surveys and Censuses in 2002, 20 per cent of indigenous children and youth between the ages of 10 and 11 work, as do 31 per cent of indigenous children and youth between the ages of 12 and 14, and 51 per cent between the ages of 15 and 19. The number of boys is twice that of girls. ILO reports that in 2007, 53 per cent of indigenous and non-indigenous children between the ages of 5 and 17 were working, mainly in domestic service and agriculture. The same report notes situations of forced labour among girl servants and of prostitution. ILO, UNICEF and the Inter-American Development Bank have established public information campaigns and Government support programmes in an attempt to eliminate such child labour practices, but greater effort is needed.

C. Inadequate working conditions

> The bosses don't want to give us a day off ... Not long ago a Guaraní worker asked for a day off and he was fired. He milked the cows; the milkmen never get a day off.
>
> Indigenous man in the Chaco, April 2009

20. In the Chaco region there is only one office of the Ministry of Justice and Labour, established in September 2008, and, because of the very small number of staff (two) and the lack of a budget for transport, no inspections are conducted. Paraguayan law establishes a 48-hour work week, with one day of rest; between 12 and 30 days of vacation; annual extra pay equivalent to one month of work; and social security, including medical care and a retirement pension. Most of the indigenous interviewees said that their employers did not comply with the law: some reported that they did not have rest days and the idea of extra pay, vacations and retirement pension was practically unknown to them given that the majority of indigenous people are hired on a temporary basis and sometimes by the day. It was reported that female domestic workers, in particular, usually have 12-hour work days. Unlike other Latin American countries, which rely on non-contributory pensions that play a significant role in relieving the conditions of old age, in Paraguay senior citizens receive a pension only if they have managed to make regular contributions. Older indigenous people generally find themselves in a very vulnerable situation, with no pension, and when they reach old age, employers no longer hire them and they remain without an income. The mission also received allegations of indigenous workers receiving wages far below the minimum wage. This is consistent with the finding of the General Directorate of Statistics, Surveys and Censuses that the average monthly income of the indigenous population in 2008 was 778,000 guaranies, far below the average wage of 1,193,000 guaranies for the non-indigenous population and the minimum wage of 1,341,775 guaranies.

D. Restrictions on freedom of association

> We would like to organize the Guarani workers into trade unions, but the authorities are against it, for fear of the Chaco being contaminated by ideas from outside. Once there was a strike, and the employers fired the organizers. They also tried to set up a trade union for workers in the frozen meat industry, and the employers fired them all.
>
> Government official, April 2009

21. The mission received allegations of abuses of freedom of association, including reports that the organization of indigenous workers has repeatedly been the target of repressive action, ranging from strong words and threats to the dismissal of persons seeking to form a trade union. It was reported that associations of indigenous persons, such as the Coordinating Body for the Self-Determination of Indigenous Peoples, have likewise not been well received by landowners. In addition, there are domestic legal rules that do not respect the principles of freedom of association, and the ILO monitoring bodies have for many years called upon the Government to take without delay the steps necessary to bring its national legislation into line with ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize.

E. Land

> We have many problems in getting food. We are not allowed to hunt on many estates where there is a bit of woodland. We look for work and many Mennonite and Paraguayan employers take us to their estates, but few of them treat their workers well. If our people fall sick, they don't look after then, they just leave them to their fate. They don't feed us properly and they don't pay us much either. Some get work with the missionaries, and otners live by trying to do something with the little plots of land given to us by the Government. But our lands are steadily shrinking and they don't return the territory they stole from us, which by our laws is ours. We feel cornered in on these small properties surrounded by the big cattle ranches owned by rich and powerful bosses.
>
> Indigenous man in the Chaco, April 2009

> Act No. 904 of 1981 established that each indigenous family was to receive a minimum of 100 hectares, but it didn't happen.
>
> Government official, April 2009

22. According to the national indigenous census, there are 412 indigenous communities in Paraguay, of which 185, or 45 per cent, do not yet have a legal, permanent settlement. The settlement of indigenous land claims is challenged by slow action of the State, lack of funds to buy land and, significantly, the fact that there is still no system for registering and recognizing ownership of land in Paraguay. The establishment of such a registry is necessary and will provide a basis for reviewing these severe political constraints on land awards for indigenous people.

23. Violations of indigenous peoples' rights to their ancestral lands have also attracted international attention. In 2005 and 2006, the Inter-American Court of Human Rights ruled, in the case of the Yakye Axa and Sawhoyamaxa communities, that the Government should return the ancestral lands to the aforesaid communities within three years, establish a fund for development projects in the communities and provide access to education, health and food during the three-year transitional period. The judgements, however, have yet to be implemented.

F. Weak presence of the State and lack of access to health and other public services

> It's been two years since a doctor has come to the community. My brother died in my arms because we couldn't get him to a doctor.
>
> Indigenous man in the Chaco, April 2009

24. Medical research on indigenous communities carried out in 2008 and 2009 reveals a high prevalence of malnutrition among children and adolescents as well as a high incidence of pulmonary tuberculosis and Chagas' disease. There is also a high incidence of ectoparasites, scabies and pyodermitis among indigenous groups. Specific studies on Chagas' disease in the Chaco region (2003) among both indigenous and non-indigenous people reveal an incidence of this serious affliction bordering on 53.2 per cent, seven times the national rate. Despite the prevalence of disease, 87.8 per cent of the indigenous population have no access to medical services. Only 2 per cent are covered by public medical insurance, and the remaining 10 per cent by another type of insurance, such as Ayuda Mutual Hospitalaria, a contributory insurance for indigenous peoples, which the mission found to have discriminatory effects.

25. Indigenous children of the Chaco region have inadequate access to education. Of the 164 indigenous communities living in the departments of Boquerón and President Hayes, 19 per cent do not have access to primary school. Only 3 per cent of schools provide intermediate education. Schools are in Mennonite hands: the Ministry either pays the teachers in Mennonite schools or Mennonite NGOs build and run the schools, in the absence of an adequate public policy for the reasons mentioned above. While 58 per cent of teachers are indigenous, 30 per cent of them have had only a primary education. Overall, 45.5 per cent of Guaraní are illiterate.

G. The critical situation of indigenous communities as regards food insecurity

> Now, because of the drought, there is no harvest, so many indigenous people have to emigrate, and employers take advantage of their vulnerability.
>
> Government official, April 2009

26. According to a study reported by FAO in 2004, there are more than 800,000 undernourished people in Paraguay, representing 14 per cent of the total population. Chronic malnutrition affects 11 per cent, or some 645,000 people, and acute malnutrition 5 per cent. While Paraguay has a high capacity for food production, malnutrition has been aggravated by the abandonment in the past decade of the

traditional diversified production system of small farmers, which ensured their food security, by the low returns from the cash crops traditionally grown by such farmers and by the shortage of water.

27. The Government is considering reforming and expanding the Paraguayan Institute of Indigenous Affairs (INDI), attaching it to the presidency and giving it a mandate for inter-ministerial coordination. The National Plan for Food and Nutritional Sovereignty and Security of Paraguay (PLANAL) has also been launched requiring the joint and coordinated action of all stakeholders, public and private, whose work is related to the agricultural sector, as well as those who depend on it. The Ministry of Agriculture therefore has an agrarian outreach office in the Chaco, with three technicians. Both the reform of INDI and the implementation of PLANAL seem to be necessary and correct steps to support indigenous communities and must be carried out as a matter of urgency in view of the severe food crisis.

V. Recommendations of the Permanent Forum

A. Free, prior and informed consent

28. All branches of the Government of Paraguay — legislative, executive and judicial — and all its constitutional agencies, such as the Ombudsman's Office, must take full responsibility for ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.

29. All recommendations included in the present report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

B. Institutional strengthening

Governance in the Chaco region

30. In accordance with its constitutional jurisdiction, the Government of Paraguay must ensure the adequate presence of State institutions in the zones affected by forced labour and child labour practices, including by strengthening the presence of the District Attorney, the Ombudsman, the Ministries of Justice and Labour, Education and Culture, and Public Health and Well-Being. This includes increasing the number of well-trained technical personnel (including indigenous individuals) in the various ministries, ensuring that public services are provided to indigenous communities and ensuring adequate and sustained budgetary allocations.

31. All such Government endeavours must be implemented on the basis of the free, prior and informed consent of indigenous peoples through the reformed INDI or otherwise. The Government of Paraguay must ensure that local authorities and institutions in the Chaco region do not make decisions on indigenous peoples' issues without their due consent.

Ministry of Justice and Labour: labour inspections

32. The existence of forced labour practices involving indigenous peoples in Paraguay has been well documented. The Government must urgently gather data

identifying the employers involved in such practices for all legal purposes, including criminal liabilities.

33. The Government must provide sufficient resources to the Department of Labour to carry out adequate and timely labour investigations within the Chaco region. Resources provided must include salaries for inspectors, computers and Internet access, vehicles and equipment.

34. Labour inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. United Nations agencies in Paraguay should offer technical support and training in this regard.

35. The Ministry of Justice and Labour must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.

36. The Government must ensure the safety of labour inspectors and their free access to all lands.

37. The Government should create an accessible system for complaints regarding labour abuses.

38. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.

39. The Ministry of Justice and Labour should modify the composition of tripartite commissions, currently comprising public administration, labour organizations and employer organizations. Such commissions must also include indigenous representation in accordance with the requirements of ILO Convention No. 169 and the Declaration.

40. The Ministry of Justice and Labour must ensure that indigenous workers are not paid less than the minimum wage and enjoy the social services and benefits on an equal footing with non-indigenous workers.

41. It should be considered that the final will of indigenous peoples who are subjected to forced labour may not be to become hired workers in the haciendas, but to recover their land and resources.

Law enforcement: police, prosecutors and judges

42. In accordance with their constitutional jurisdiction, the Government must ensure the integrity of law enforcement agencies, prosecutors and courts through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Police forces in the Chaco region should be led by officers who will remain neutral in carrying out their official duties.

43. The Government should ensure that members of the police, prosecutors and judges in the Chaco region are given training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the Declaration. United Nations agencies in Paraguay should offer technical support and training in this regard.

44. Indigenous communities must have access to legal services to protect and defend their interests on a collective basis.

45. Prosecutors should vigorously prosecute cases of human rights abuses, including labour abuses, against indigenous peoples and their defenders and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the person who reported the abuse.

46. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and international human rights law.

Institute of Indigenous Affairs

47. The structure and the performance of INDI should be reformed to be in compliance with international instruments on the human rights of indigenous peoples, and particularly with regard to the right to free, prior and informed consent set out in the Declaration. The reformed INDI should not be located within a government ministry, but rather should be placed in the Office of the President or be autonomous, with the authority to influence the policies of all the ministries. This institutional reform should be designed with the participation of all involved stakeholders, taking especially into account the views of indigenous peoples on the matter. The mission is encouraged by the plan of the Government of Paraguay to undertake such reforms and urges Congress to support it by adopting the necessary legislative amendments.

48. Once reformed, INDI and the newly formed Commission to Eradicate Forced Labour should, in cooperation and consultation with indigenous peoples, formulate and promote a plan of action on forced labour with the capacity to address the root causes of forced labour, especially those related to land tenure.

49. The in-depth reform of INDI must not pre-empt or thwart the freedom of indigenous organizations and peoples to act and make decisions exclusively by themselves. Their right to free, prior and informed consent must always be respected.

C. Financing

50. The Congress and the Government of Paraguay must ensure adequate public funding and budgetary allocations to implement the recommendations contained in the present report.

51. The United Nations system should provide assistance on indigenous issues in Paraguay, including the abolition of forced labour.

52. The mission calls upon the donor community, including bilateral donors, to support initiatives towards the implementation of these recommendations in Paraguay.

D. Land reform and food security

53. The Government of Paraguay should create, as a matter of urgency, a land registry for the Chaco region. A deadline should be established for its completion, and it should be reviewed to assess the legitimacy of existing land titles, particularly in cases of land claimed by indigenous communities.

54. As lands have been taken from indigenous peoples with neither consent nor compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

55. The return of lands to indigenous peoples, and particularly to communities that have no land or only small parcels, should be part of judicial processes consistent with indigenous peoples' right to the recovery of their land. In addition, negotiations with the Mennonite society and organizations of cattle farmers of the region carried out by the Government, together with indigenous representatives, are advisable. Negotiations should be undertaken on the basis of principles of human rights and equality with the conviction that it is possible to create an intercultural society that is more just, in which all citizens, including indigenous and non-indigenous peoples, can develop peacefully.

56. The Government should implement the decisions of the Inter-American Court of Human Rights regarding the situations of the Yakye Axa and Sawhoyamaxa indigenous communities, which, since being displaced from their traditional lands, have been living in precarious conditions with irregular water and food supplies and inadequate medical care. The mission recognizes that President Fernando Lugo Méndez has taken initial steps with regard to implementation of the Yakye Axa case, but calls for the full and immediate implementation of the decisions.

57. Agrarian reform should be based on integrated and participatory management at the local, regional and national levels and should be undertaken jointly with PLANAL in the Chaco region with the support of FAO. In accordance with the PLANAL initiative, the reform should seek to guarantee sustainable processes for beneficiary populations, including through the provision of capacity-development programmes and by ensuring permanent access to basic services, including food, water and education.

E. Development, including water and health

58. Drought in the Chaco region is a cyclical phenomenon that has worsened in the past few years, leaving both indigenous peoples and smallholders with insufficient access to food and water. Even though a state of emergency has been declared every year since 2004 because of drought in the Chaco region, it is recommended that the Government of Paraguay prepare a contingency plan to be activated prior to the dry season so as to ensure the availability of potable water and food for the affected population, especially indigenous peoples. The Government should see the plan as a starting point for ensuring drinking water and food security for the indigenous and poor people of the Chaco on a permanent basis, using PLANAL as the cornerstone.

59. In accordance with their constitutional jurisdiction, both the Government of Paraguay and the governors of the relevant departments should support the

development of viable alternatives to obtain income and the creation of sustainable productive and commercial activities for indigenous peoples, including women, affected by forced labour practices.

60. The mission notes that the Ministry of Education and Culture is undertaking important initiatives to improve educational opportunities for indigenous children. The Government must also address the barriers that indigenous children face in enrolling in and attending school, expand educational services and provide adequate budgetary allocations to ensure education for all.

61. In accordance with their constitutional jurisdiction, both the Government and the governors of the relevant departments should expand coverage of health care and social security. Mobile brigades could be established and adequately funded to provide such services to indigenous communities that would otherwise lack access.

62. The Ayuda Mutual Hospitalaria law, which creates a special medical insurance system that applies only to indigenous peoples in the Chaco region, must be repealed or reformed.

63. Mennonite boards should not have any jurisdiction on social services and health-care systems for indigenous people.

64. In accordance with their constitutional jurisdiction, both the Government and the governors of the relevant departments should prioritize capacity-building for indigenous organizations, as well as the development of leadership and professional skills. Indigenous women must be included in such programmes.

65. The Government should improve the communications infrastructure in the Chaco, including by providing indigenous peoples of the region with access to radio and telephone communications.

66. The mission supports the efforts of the environmental ministry to prevent deforestation in the Chaco and calls upon the ministry to continue its efforts in this regard with the free, prior and informed consent of indigenous peoples of the region.

F. End discrimination on the basis of indigenous status

67. The Government should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples.

68. The Government must repeal all discriminatory laws and practices, including, as mentioned above, the Ayuda Mutual Hospitalaria law.

69. The Government must put an end to the segregation of social services, including schools and health-care facilities.

G. Regional cooperation and cross-border strategies

70. The Governments of Paraguay and Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border programme for the protection of indigenous peoples of the Chaco should be considered.

71. The United Nations and bilateral aid agencies should share relevant good practices they have gathered from their experiences in different countries and should finance cross-border programmes.

H. Development of a national strategy/action plan

72. Working in cooperation and consultation with indigenous peoples, the Government and its newly formed Commission to Eradicate Forced Labour should create a national action plan on forced labour. The plan should address discrimination as the root cause of forced labour and should establish a monitoring process to ensure its implementation.

73. The Government should consider hosting a national conference on indigenous peoples to increase the visibility of indigenous issues within Paraguay and to improve coordination among Government and United Nations agencies and indigenous peoples' organizations.

I. Comply with obligations under international law

74. All branches of the Government — legislative, executive and judicial — and all its constitutional agencies, such as the Ombudsman's Office, should comply with their obligations under international laws and conventions.

75. The mission reminds the Government that, in seeking to eliminate the root causes of forced labour of indigenous peoples, it should be guided by international instruments and, in particular, the United Nations Declaration on the Rights of Indigenous Peoples, which Paraguay voted for in the General Assembly, and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which was ratified by Paraguay. The mission supports the Government's intention to implement ILO Convention No. 169.

76. The mission requests the Government to take urgent action to ensure that the labour rights of indigenous peoples are respected and protected, especially the core labour standards of ILO related to freedom of association, the elimination of forced labour, the elimination of child labour and equal opportunities without discrimination, as well as the international labour standards related to social security and wages.

77. The Supreme Court of Justice and, in particular, its Constitutional Chamber, should pay greater attention to treaties and other international human rights instruments, in particular the Universal Declaration of Human Rights and ILO Convention No. 169. The Court should also be aware of constitutional problems with regard to laws that respect the right of consultation of indigenous peoples.

78. The Supreme Court of Justice and, in particular, its Constitutional Chamber, should also pay greater attention to the rulings handed down by the Inter-American Court of Human Rights concerning indigenous peoples beyond the above-mentioned cases directly concerning Paraguay.

J. Additional follow-up for the United Nations

79. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in Paraguay, the goal of which should be the application of the United Nations Declaration on the Rights of Indigenous Peoples, as well as other relevant international conventions, and the implementation of the recommendations of the Permanent Forum by the relevant agencies.

80. The Permanent Forum should encourage development agencies to provide assistance to indigenous peoples of the Chaco region, including by supporting efforts to combat forced labour and to improve access to water, food and basic social services, such as health care and education.

81. The mission urges United Nations agencies to support the Ministries of Labour and Statistics in their continuing efforts to generate data on working conditions among indigenous populations.

82. The United Nations agencies in Paraguay should work together closely to address indigenous issues, including forced labour. They should also coordinate their efforts in support of the emergency facing the peoples of the Chaco due to drought and should support the Government in building a strategy for the more sustainable development of the fragile Chaco region and its indigenous peoples, starting with supporting PLANAL.

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Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Summary and recommendations of the report of the mission of the Permanent Forum on Indigenous Issues to the Plurinational State of Bolivia**

Summary

In response to a request from the Government of the Plurinational State of Bolivia, the Permanent Forum on Indigenous Issues organized a multi-agency mission to visit the Department of Santa Cruz and La Paz in April and May 2009 to verify complaints regarding forced labour and servitude among communities of the Guarani people and to draw up proposals and recommendations to ensure that the fundamental rights of persons, communities, and the indigenous peoples are respected. The full report of the mission was presented to the Government on 31 August 2009. The present report contains a summary of the full report.

* E/C.19/2010/1.

** The full report can be found on the website of the United Nations Permanent Forum on Indigenous Issues, at http://www.un.org/esa/socdev/unpfii/en/news.html.

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I. Introduction

1. In response to a request from the Government of the Plurinational State of Bolivia, the Permanent Forum on Indigenous Issues organized a multi-agency mission to visit the Department of Santa Cruz and La Paz in April and May 2009 to verify complaints regarding forced labour and servitude among communities of the Guaraní people and to draw up proposals and recommendations to ensure that the fundamental rights of persons, communities, and the indigenous peoples are respected. The mission was comprised of the chairperson of the Permanent Forum, Victoria Tauli-Corpuz; members Lars Anders-Baer, Bartolomé Clavero and Carlos Mamani; and two officials of the Department of Economic and Social Affairs of the United Nations Secretariat, as well as experts from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country, the Food and Agriculture Organization of the United Nations (FAO) (subregional office of FAO in Panama) and the International Labour Organization (ILO) in both Bolivia (Plurinational State of) and Peru.

2. The mission's mandate was established in a recommendation of the Permanent Forum at its seventh session in May 2008 (see E/2008/43, para. 156), and confirmed by an official invitation from the Government on 12 December 2008.

3. The present report is a summary of the full mission report, which is based on interviews conducted by the mission, inspections, census data and information from the Prefecture of Santa Cruz and the national Government, official documents of ILO, OHCHR, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, the Inter-American Commission on Human Rights of the Organization of American States (OAS), and the Indigenous Peoples and Empowerment Programme of the Swiss Agency for Development and Cooperation in the country; as well as information and documentation provided by indigenous peoples' organizations, the livestock breeders' federation, and national and international non-governmental organizations (NGOs).

4. The mission visited communities in the Chaco region and met with indigenous organizations representing the Guaraní people, such as the Guaraní People's Assembly (APG); with the Captaincies of Alto Parapetí, Chuquisaca and Tarija; with landowners in the area and the national Federation of Livestock Breeders; with the Ministers of Justice, Rural Development, Agriculture and Land, and Labour, Employment and Social Security; with the Vice-Ministers of Labour and Social Security, Autonomies and Justice and Fundamental Rights; with the Office of the Attorney General (Fiscalía General del Estado), the National Agrarian Tribunal, the Acting Ombudswoman (Defensora del Pueblo en Suplencia Legal), the President of the Senate and that of the Chamber of Deputies with its Human Rights Committee, the Director General of the country's lowlands, the office managing the Inter-ministerial Transition Plan for the Guaraní People, the National Institute of Agrarian Reform (INRA), as well as the Office of the Prefect and the District

Note: Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses quoted herein have been kept anonymous. The Permanent Forum wishes to express its appreciation of the efforts of individuals and institutions which, by providing information, contributed to the mission.

Attorney's Office of Santa Cruz de la Sierra. The Permanent Forum wishes to thank individuals, organizations and institutions for the trust they placed in the mission.

5. At the eighth session of the Permanent Forum, members orally presented the recommendations contained in the present report. On the basis of the presentation, the Permanent Forum thanked the Governments of the Plurinational State of Bolivia and Paraguay for their invitations, welcomed the mission, which had been carried out pursuant to the Forum's recommendation regarding the situation of forced labour in Guaraní communities at its seventh session, and decided to publish the reports of the mission as documents of the Forum. The Forum urged United Nations country teams to follow up on the recommendations and suggested to the relevant Governments that they report on the implementation of the recommendations at the ninth session of the Forum (E/2009/43, para. 94).

II. Legal context

6. The Bolivian Government has ratified and supported a series of international treaties and declarations and therefore has a duty to implement them. To that end, the country has made a major effort to incorporate these commitments in domestic law. For instance, the United Nations Declaration on the Rights of Indigenous Peoples (see General Assembly resolution 61/295) not only became Law No. 3760, its principles have been built into the new Constitution of the State.

7. The Constitution itself, the General Law on Labour, its implementing regulations and the Criminal Code condemn, among other things, forced labour, child labour, and labour discrimination, and they defend freedom of association, job security, observance of the minimum wage and of the maximum number of hours of work, and compliance with contributions to social security.

8. International law obliges Governments to use their power to protect and give effect to human rights.[1] That entails not just ensuring that their officials comply with human rights standards, but also acting with due diligence to address violations committed by non-State authorities and by private persons. When a State or a legally constituted authority knows or should know that violations of human rights are being committed and fails to take appropriate steps to prevent them, it shares with the perpetrators responsibility for those violations. The principle of due diligence includes the obligation to prevent human rights violations, investigate them, punish them when they occur, and provide redress and support for victims.

III. Forced labour of Guaraní communities in the Bolivian Chaco

9. The existence of forced labour affecting indigenous communities of the Chaco region has been extensively documented in investigations and reports of the Bolivian Government, intergovernmental organizations, indigenous peoples'

[1] See, for example, art. 2 of the International Covenant on Civil and Political Rights.

organizations and NGOs.[2] The Government has taken a number of measures to address the issue, including the establishment in 2007 of the National Council for the Eradication of Forced Labour and approval of the Inter-ministerial Transition Plan for the Guaraní People (Supreme Decree No. 2929). The plan, which envisages, inter alia, effective exercise of the rights of Guaraní families and land reorganization (*saneamiento de tierras*), has encountered direct opposition from the owners of large estates in the Chaco region, as well as from local governments, civic committees and stockbreeders associations.

10. The Ministry of Justice, with the support of the Swiss Agency for Development and Cooperation and ILO, and in coordination with the Council of Guaraní Captains of Chuquisaca, has also fostered processes of reconciliation between owners of haciendas in the Department of Chuquisaca and Guaraní workers, who worked for years without remuneration. The reconciliation process resulted in monetary payments to redress violations of labour rights, compensate workers for years of service, and provide for social benefits. However, in other areas of the Chaco, including Alto Parapetí, many landowners continue to deny the existence of forced labour.

11. The forced labour of Guaraní peoples takes place in the context of the region's complex political economy. Land ownership in the country is highly concentrated. The ancestral lands that have been recognized or are being claimed by Guaraní peoples often contain important reserves of hydrocarbons and are in the middle of large estates, sometimes crossed by gas pipelines owned by oil companies. The existence of this vast wealth, from which the Guaraní people derive no benefit, provides landowners an additional interest in opposing any agrarian reform, and has greatly exacerbated tensions between the Government and the local authorities in the country's richest (oil and gas) departments. Those departmental local authorities, in conjunction with big landowners, are fighting for control of the resources and looking for a high degree of autonomy from the Government.

12. In many cases, the owners of haciendas in the region do not have high incomes and their haciendas operate with inexpensive indigenous labour. This has become politically significant since the adoption in 2007 of Supreme Decree No. 29215, which establishes that the existence of relations of servitude is detrimental to society, against the collective interest, and an obstacle to the performance of "the economic and social function". According to the provisions of articles 28 and 29 of

[2] These reports are detailed in the full report of the mission and include reports by the NGO Anti-Slavery International (1997, 2006); ILO (2005); the Vice-Ministry for Lands (2005); the Ministry of Justice, in coordination with the Ombudsman and the Council of Guaraní Captains of Chuquisaca, with support from the Swiss Agency for Development and Cooperation (2005); the Ministry of Justice of Bolivia and the Swiss Red Cross (2007). The situation was also addressed by the December 2007 mission of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who underscored the existence of indigenous people subject to various forms of servitude or forced labour in the haciendas of the Chaco region. In June 2009, the Inter-American Commission on Human Rights of OAS also carried out that fact-finding mission in the Bolivian Chaco. According to its report, "The Commission has received detailed information on the case of Guaraní families living on estates in the Bolivian Chaco (…) This situation has persisted for decades and, in general terms, involves excessive physical labour for persons of all ages, including children, teenagers, and elderly adults, in some cases under the threat of corporal punishment, about which the Commission heard alarming testimony. (…) According to reports … the owners are frequently part of or are directly related with the local political power (…)."

Law No. 3545 (the community-based Agrarian Reform Renewal Act), lands used to the detriment of the collective interest (art. 28) shall revert to the original domain (*dominio originario*) of the nation, without any compensation, and total or partial failure to comply with the economic and social function shall be grounds for such reversion (art. 29). In a referendum held on 24 January 2009, the State approved its new Constitution, which is consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Despite opposition in eastern parts of the country (Santa Cruz, Pando, Beni, Tarija), the new Constitution was adopted with a majority of votes. Both the new Constitution and the Declaration provide for the reconstitution of indigenous territories and self-government for these peoples.

13. Thus, the owners of the haciendas have two main reasons for getting organized: (a) to keep title to their lands, given the existence of oil and gas in the area; and (b) to keep their position of authority (*patronos*). The mission heard allegations that there is a third reason, which still needs to be proved, namely a possible partnership of the hacienda owners with drug traffickers, which would explain why the Alto Parapetí area is kept closed (with padlocks on the bars or gates) and monitored (using radio communication systems).

14. Faced with the new Constitution and amendments to the agrarian reform regulations, the hacienda owners appear to have quickly organized themselves to review the risks posed to them by the policy of returning lands to the communities and reconstituting their territories. The mission received evidence that the landowners were now focusing on improving some of the working conditions of the Guaranies on condition that they would have no ties with the Guaraní People's Assembly and were expelling from the haciendas and threatening indigenous persons affiliated to APG. The mission was also shown evidence that the hacienda owners have obtained the support of the authorities in the area and of the Prefecture of Santa Cruz. The mission received evidence of blatant discrimination and organized violence and ascertained that the Prefecture of the Department of Santa Cruz, as well as the municipal authorities, still take the line that the servitude and forced labour to which the indigenous peoples are subjected do not exist.

IV. Summary of the findings of the mission

15. The full report of the mission contains analyses of the situation of the Guaraní people with respect to violations of different rights (forced labour, child labour, poor working conditions, sexual abuse, the loss of, and consequent lack of access to, lands, the non-existence of social services, restrictions on the right to freedom of association, discrimination, and judicial bias). It includes a section on the limited progress made with agrarian reform and the Transition Plan for the Guaraní People, for political and bureaucratic reasons, which has left entire communities in an extremely precarious state, including a severe food crisis that needs to be addressed as a matter of urgency.

16. The conclusion is that forced labour exists in the Chaco region, along with grave violations of international treaties ratified by the State. The mission appreciates the decision announced by Government officials to adopt measures aimed at eradicating conditions and situations preventing the full exercise of human rights. However, the mission also established failure to comply with the following instruments:

- United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295, annex, and Law No. 3760 of the Plurinational State of Bolivia)
- ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)
- ILO Convention concerning Forced or Compulsory Labour (No. 29)
- Supplementary Convention concerning the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- ILO Convention concerning Minimum Age for Admission to Employment (No. 138)
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour (No. 182)
- ILO Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87)
- ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98)
- ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)
- ILO Convention concerning Discrimination in Respect of Employment and Occupation (No. 111)
- ILO Convention concerning the Protection of Wages (No. 95)
- Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex)
- Convention on the Rights of the Child (General Assembly resolution 44/25, annex)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex)
- International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 (XX), annex)
- International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI))
- International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI))
- American Convention on Human Rights (arts. 6, 13, 15, 16, 21, 22 and 24).

17. These violations, as well as violations of the old and the new Bolivian Political Constitution, the General Law on Labour and the Bolivian Criminal Code, oblige the Government to adopt urgent measures to address the situation of the Guaraní

people in respect of the following issues ascertained by the mission, which are summarized below.

A. Existence of forced labour and servitude of Guaraní men and women

> The owner gives us sugar, noodles, rice, and two t-shirts, but we always owe more than our wage.
>
> Guaraní man, May 2009

> Again and again, the cattle breeders get what they want. The people work and can never pay their debt. Every year they draw up a list ("settlements") and its gets longer and longer. Prices are much higher than in the markets. If you ask for social security, the boss says that the employee has to pay. If you say you are leaving, the boss says you are just lazy and don't want to work.
>
> Guaraní woman, May 2009

18. There is a specific term for forced labour in the country, namely *empatronamiento* (which means subjected to the "patrón" or employer). Very often, it is servitude or debt bondage (*enganche*), or the captivity of families inside the haciendas. Guaraní men and women grow old on the estates working as labourers in the fields, looking after cattle, or doing other work, including domestic chores, for the owner. Wages are either very low or non-existent as such, and are often not enough to satisfy basic needs. The indigenous workers become indebted to the owners, who advance them remuneration in the form of food and clothes, recorded at high prices in the accounts, in such a way that the debt is perpetual. Accounts are reconciled once a year, with the employers keeping the books. The situation is particularly bad for women in domestic service. The private world, in which they work long hours, usually turns into an environment of subjection, maltreatment and verbal and physical aggression. Often there is no monetary remuneration and no health-care coverage.

B. Existence of child labour and other violations of the rights of the child

> The children work without being paid and the owner says they are playing, not working.
>
> Guaraní man, May 2009

> The owners come and say they are taking our children to the city to be educated, but when they come back they don't know anything. Many girls are sexually abused and when they become pregnant by the owner, they send them back to the community. Some never return.
>
> Guaraní man, May 2009

19. Children are used to feed hens, look after pigs, graze calves and cattle, and to separate kernels from corn. These are considered "natural", unremunerated chores. School infrastructure in the area is deficient and, as schools are often private and operated within haciendas, landowners may take children out of school and put them

to work. The mission received reports that the hacienda owners interfere with Guaraní children's opportunities in other ways too, as when one family of Alto Parapetí landowners initially objected to a trip to La Paz by a group of Guaraní children, financed by ILO and the Swiss Agency for Development and Cooperation, to take part in a meeting of indigenous children called Constructores de la paz (Peacebuilders). (Later the landowners retracted and the children were able to go.) The mission also heard allegations of trafficking in Guaraní children, who are separated from their families and taken to urban centres to work as domestics; as well as reports of sexual abuse of Guaraní girls.

C. Inadequate labour conditions

> Labour law does not apply here because we are poor employers who live simply.
>
> Hacienda owner in Alto Parapetí, May 2009

20. Prejudice and discrimination against women, indigenous peoples and others continue to be widespread, constituting an obstacle to the social development of the country. Women, especially indigenous women, often work longer hours than men, usually for lower wages and in precarious, unstable jobs. The minimum wage is low, even more so if wages are received in kind, with product prices set arbitrarily and with no form of supervision, as is reportedly the case in numerous haciendas in the Chaco. In recent months, some hacienda owners, aware of the accusations of servitude and forced labour, have expelled numerous Guaraníes from their estates and reduced their workforce, while increasing wages for the few Guaraníes allowed to remain "because they are of good character and don't want problems".

21. The mission received reports that maltreatment and corporal punishment, which were frequent just a few months ago, have stopped. However, most workers are still paid in kind: in food and clothing. The mission also received reports from Chuquisaca that elderly Guaraníes collecting Renta Dignidad (a non-contributive universal old age pension) were having it "kept for" them by the hacienda owner, who had given them some very low-value kitchen utensils in return. Part of the problem stems from the very small number of Government labour inspectors, lack of resources to carry out inspections, and the barriers that inspectors encounter if they try to enter the haciendas.

D. Lack of legal security in respect of land ownership, be it collective or individual plots; deprivation of territory, lands and resources; inequitable land ownership

> We received some land from NGOs and the Church: 17 hectares for 20 families. That is not enough; it just provides us with enough for housing. We want to have both land and territories.
>
> Guaraní leader, May 2009

22. The Agrarian Reform Law is being implemented, but slowly and with interruptions. The reorganization of lands, which consists of a revision of title deeds and land tenure in rural areas, has met with open and violent resistance from

hacienda owners and by local authorities. Representatives of INRA, as well as the Vice-Minister of Lands and numerous Guaraní leaders have been beaten, harassed and kidnapped and prevented from entering the area to do their work.

23. In February 2009, INRA issued reorganization resolutions ordering the reversion to the State of 36,000 hectares of lands owned by four hacienda owners in the Cordillera province of Santa Cruz because of proof of the existence of relations of servitude and, therefore, of non-compliance with the economic and social function established under article 157 of the Implementing Regulation of Law No. 1715, amended by Law No. 3545 on the community reorganization of agrarian reform. In March 2009, President Evo Morales (accompanied by army and police officers) awarded the first rural property title deeds resulting from this reorganization to both Guaraní families and non-Guaraní small farmers in the area. The affected hacienda owners responded by challenging the decisions taken by INRA before the National Agrarian Tribunal.[3]

24. Given previous cases, this could take years to resolve. The tensions between the Government and the opposition have led to paralysis of the national judicial system and to politicization of local courts. That is one of the main obstacles to the enforcement of any judicial ruling in the country, including decisions related to the agrarian reform programme.

25. According to INRA, in December 2008, 52 per cent of the lands still have to be reorganized and in 12 per cent the process is under way. In other words, only 35 per cent had been examined as part of the titling process. The result of this long bureaucratic process has been a severe worsening of living conditions for the Guaraníes. The disputed lands remain intact, despite the handing over of titles. Many Guaraníes were expelled from the haciendas just months ago and have no access to land; and those that do have access to a small amount of land lack seeds and materials. They should have been provided under the Inter-ministerial Transition Plan for the Guaraní People (PIT), which has, however, also suffered long administrative delays.

E. Restrictions on freedom of association and movement

> Because I am trying to get ourselves organized, I cannot work, the owners don't want to see me.
>
> Guaraní man, May 2009

26. The mission received reports of numerous violations of both freedom of association and freedom of movement. Restrictions on freedom of movement are exacerbated by geographical isolation of the Guaraní communities; in Alto Parapetí it takes several hours in a vehicle, and many more on foot, to reach the nearest town, Camiri. Access roads in Alto Parapetí cross the haciendas, which means that the hacienda owners can control the use of them.

[3] The Santa Cruz Federation of Livestock Breeders gave the mission a file explaining the legal actions brought against the Government, which include challenging the decisions of INRA, an appeal on account of actions against the Constitution, criminal charges for falsification of documents and facts (eight complaints of irregularities in surveys of Guaraníes conducted by INRA) and the administrative law case before the National Agrarian Tribunal.

27. The mission received reports of abuses of the freedom of association, in particular in relation to membership in the APG. Since it was founded in 1987, APG has been disfavoured by many hacienda owners, who now promote new Guaraní organizations co-opted by the owners and working in their favour. These new organizations promoted by the hacienda owners are supported by the Prefecture of the department for housing improvement projects and other food-for-work programmes, in spite of the fact that the mission was informed that, according to the Government Administration and Control System, it is prohibited to use public funds on private property. The mission was informed that such investment is made on condition that the Guaraníes renounce membership in APG. The mission was also informed that Guaraníes associated with APG are stigmatized and, in some cases, recently expelled from haciendas and now unable to get jobs on other farms in the area, which is a recent development that has triggered a serious food security crisis among the expelled families.

F. Systematic violence against indigenous peoples

> That's how we live here in fear. In fear because we live so close to the owners. If we say bad things about the boss, they punish you.
>
> Guaraní man, May 2009

> Not long ago, the owner came and burnt down our school. Now the children have no school.
>
> Guaraní man, May 2009

28. There have been numerous documented episodes of violence against indigenous peoples in the eastern region of the country. For example, in July 2008, the Ombudsman prepared a report by his Office on the events of April 2008 in Alto Parapetí, as a consequence of the reorganization of lands, in which he reported that senior INRA officials, civilians and members of the Guaraní People's Assembly were kidnapped and tortured, as a result of which 46 people were injured, 35 slightly and 11 severely, including the Director of INRA. The Ombudsman reported that those acts were followed by even more violent attacks in September 2008.

G. Discrimination, lack of access to justice and lack of impartiality of the judicial system and of regional public administration

> The hacienda owner [name omitted] was summoned to go to Camiri to answer for the crime of using firearms but he didn't go. The hacienda owner [name omitted] was summoned to go to Camiri to answer for the crimes of violence against our communities and he didn't go either, and nothing was done. Now they have denounced our Guaraní brothers, who have to go to Santa Cruz. We haven't got the money needed for their trip but if they don't go they are threatened with detention pending trial.
>
> Guaraní leader, May 2009

29. The mission found serious cases of lack of impartiality, to the detriment of indigenous peoples, at both the judicial and administrative level. At the judicial level, the full report of the mission details a number of cases, including the failure to

adequately investigate September 2008 attacks on the offices of indigenous peoples' organizations and NGOs supporting them. The mission also heard reports indicating a lack of impartiality in terms of the administrative system. The mission was informed, for example, that the State had not built schools, health centres or public housing for Guaraní communities inside the haciendas because it is prohibited to use public funds on private property. Nevertheless, the mission ascertained that recently public funds were invested in private haciendas in Alto Parapetí; so that the hacienda owners have allowed benefits for co-opted Guaraníes who are loyal to the owner,[4] while Guaraníes who fight for their rights have received nothing.

H. Weak presence of the State, lack of political and administrative governance: the critical state of Guaraní communities

> The results of the reorganization of lands will take a long time, but the Guaraní people need to eat now. We can't eat the land; we need more seeds and tools for ploughing ....
>
> Guaraní leader, May 2009

> I live in one of the urban integrated areas. What we earn is just enough to eat and to go on working. We lived in a weird kind of poverty from which there is no way out. On the face of it, we're free, but in reality we aren't.
>
> Guaraní leader, 3 May 2009

30. The Bolivian Government is currently promoting the Community Reorganization of the Agrarian Reform (Reconducción Comunitaria de la Reforma Agraria). In addition, and more specifically, it has begun taking steps under the Inter-ministerial Transition Plan for the Guaraní People. However, progress has been slow and sporadic. The situation of the expelled and landless Guaraní families is very serious indeed, with a food crisis that needs to be alleviated as a matter of urgency. The mission observed that numerous children in the Guaraní communities showed signs of second-degree malnutrition, which has irreversible consequences in terms of child development, leading to a higher incidence of disease, stunting, and a lower adult intelligence quotient. No crops have been sown in 2009. The food crisis, threats and lack of opportunities have induced a high percentage of Guaraníes to migrate to the city of Santa Cruz, a development that has produced uprootedness, loss of identity, and also very precarious living conditions in the so-called integrated urban areas, which are actually slums on the outskirts of Santa Cruz.

V. Recommendations of the Permanent Forum

A. Free, prior and informed consent

31. The three branches of the Bolivian Government — executive, legislative and judicial — as well as the Ombudsman Office, departmental governments and all other autonomous governments to be established, must take full responsibility for

[4] The housing programme of the Concern Project International, with the support of the United States Agency for International Development, which requires that 80 per cent of the investment be counterpart put up by the Prefecture.

ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.

32. All recommendations included in the present report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

33. Given that Autonomy Statutes were enacted prior to the Constitution, they do not incorporate the Constitution. Until the Autonomy Statutes fully adapt to the Constitution, all State institutions must ensure that departmental policies do not support or conceal in any manner forced labour practices, and that all departmental policies are implemented with the free, prior and informed consent of the indigenous peoples affected in accordance with the provisions of the Constitution.

B. Institutional strengthening

Governance in the Chaco region

34. In accordance with its constitutional powers, the Bolivian Government must ensure the adequate presence of the State institutions in the zones affected by forced labour and child labour practices, including by strengthening the presence of the Ombudsman, the Public Ministry, and the Ministries of Labour, Employment and Social Welfare, Education, Health and Sports and Cultures, and the Vice-ministries of Decolonization and of Interculturality. This includes increasing the number of well-trained technical personnel, including Guaraní peoples, under the various ministries, ensuring that public services are provided to indigenous communities and ensuring adequate and sustained budgetary allocations.

Labour issues

35. The Government must provide sufficient resources to the Ministry of Labour, Employment and Social Welfare to carry out adequate and timely labour inspections within the Chaco region. Resources provided must include adequate salaries for labour inspectors, computers and Internet access, training, vehicles and equipment.

36. Labour inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. United Nations entities in the country should offer technical support and training in this regard.

37. The Ministry of Labour, Employment and Social Welfare must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.

38. The Government must ensure that the authorities of the Departments of Chuquisaca, Santa Cruz and Tarija guarantee the safety of labour inspectors and their free access to all lands.

39. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.

40. The Ministry of Labour, Employment and Social Welfare must ensure that indigenous workers are not paid less than the minimum wage and receive social services and benefits on an equal footing with non-indigenous workers.

41. Projects such as the Indigenous Peoples and Empowerment Project of the Ministry of Justice, which work in close collaboration and consultation with indigenous peoples of the Chaco region to protect labour rights, should be strengthened and expanded.

42. It should be considered that the final will of indigenous peoples who are subjected to forced labour may not be to become hired workers in the haciendas, but to recover their land and resources.

Law enforcement: police, prosecutors and judges

43. The justice system must be strengthened so that the rule of law will persist in the Chaco region, including through the following measures.

44. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and international human rights law.

45. Any autonomous governments that will be confirmed or established in accordance with the Constitution must ensure their justice systems adequately address issues of forced labour and other basic human rights.

46. The Government must, as a matter of urgency, ensure the safety and protection of Guaraní leaders and their defenders, and take appropriate measures against those found to have threatened or committed acts of violence against them.

47. The Government and the authorities of the departments of Chuquisaca, Santa Cruz and Tarija must also ensure the right of free movement and association of indigenous peoples, including by guaranteeing their free movement on access roads between communities. These authorities must respect the future autonomy of the Guaraní peoples, including their organizational structures, and should not promote the creation of parallel organizations or encourage conflict with discriminatory promises of aid and development projects.

48. Appropriate legal action must be taken against those who threaten the freedom of association of Guaraní peoples, including in relation to APG membership.

49. The Government must ensure that members of the armed forces, police, prosecutors and judges in the Chaco region are provided training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by ILO Convention No. 169 and the Declaration. United Nations local entities should offer technical support and training in this regard.

50. In accordance with their constitutional powers, the Government and departmental authorities in the Chaco region must ensure that all police forces remain neutral and adhere to the rule of law in carrying out their official duties.

51. In accordance with their constitutional powers, the Bolivian Government must ensure the integrity and independence of law enforcement agencies and the judiciary, including indigenous justice systems, through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Law enforcement officials

who do not respond appropriately to human rights abuses should be accountable and be subject to disciplinary measures, to ensure constitutional guarantees.

52. Indigenous communities and, as they are established, indigenous autonomies, must have access to legal services financed by the State to protect and defend their interests on a collective basis.

53. Prosecutors should vigorously and without undue delay prosecute cases of human rights abuses against Guarani peoples and their defenders, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case should be promptly communicated to the survivor of the abuse, who should be able to appeal the decision.

54. The Ombudsman Office should establish a "Mesa Defensorial" in the Chaco region to properly assist in the promotion of the rights of indigenous peoples in the region.

55. Independent organizations dedicated to the defence of indigenous peoples' rights should receive special attention and protection by government and prefecture authorities in the Chaco region.

C. Financing

56. The Congress and the Bolivian Government must ensure adequate public funding to implement all recommendations contained in the present report, especially with regard to the Minister of Labour, Employment and Social Services, INRA and the various development programmes and projects required to ensure successful development of the Guarani people, starting with the Inter-ministerial Transition Plan. All funding decisions that impact the situation of Guarani peoples in the country, including those related to the implementation of the Inter-ministerial Transition Plan, must be taken with their free, prior and informed consent.

57. To the extent possible and consistent with organizational capacity, funds should be transferred directly to indigenous peoples' organizations and institutions.

58. The United Nations should provide increased operational aid on indigenous issues in the country, including the abolition of forced labour.

59. The mission calls upon the donor community, including bilateral donors, to support all initiatives towards the implementation of these recommendations in the country.

D. Land reform

60. The Permanent Forum considers the Policy for the Reconstitution of the Territory of the Guarani Nation of fundamental importance, and a good example of an effective application of the United Nations Declaration on the Rights of Indigenous Peoples. The Bolivian Government must ensure, including through the provision of an adequate budget, the expeditious completion of the process of *saneamiento* (land titling for indigenous peoples and the implementation of process of redistribution of land). This is urgent now that the new Constitution is in force. United Nations agencies, such as FAO and the World Bank, should provide, as

requested by indigenous peoples, support and finance to the Government in this regard.

61. While the process of *saneamiento* remains ongoing, officials and staff of INRA should enjoy special protection while carrying out their official duties.

62. Insofar as the National Agrarian Tribunal is not replaced, it must address in an efficient and timely manner the cases under its jurisdiction, within the deadlines set by law. Additionally, it is recommended that the Tribunal contribute towards genuine agrarian justice, ensuring the rights of access to land, including the right of indigenous peoples to their territories. The State must assure sufficient resources to enable the Tribunal to fulfil its duties.

63. As lands were taken from indigenous peoples without consent, due process or compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

64. Land reform must take place in the context of an integrated approach to improving the situation of indigenous peoples, including through the provision of capacity-development programmes and by ensuring access to basic services, including food, water and education.

65. So long as Guaraní autonomy has not been established, the Government must undertake extensive consultation with Guaraní communities regarding land use, land ownership and collective or individual titling of land for the Guaraní people. Those provided titles to their lands should also be given the adequate support needed for them to make these lands productive so their basic needs can be met. This will include technical training, credit assistance, the provision of farm implements and technologies and farm-to-market roads, among others. FAO has extensive experience with a series of validated methodologies for ensuring success at this stage and is a natural partner in this process.

66. Given that, owing to institutional weakness and a lack of presence in the region, the Bolivian State has allowed the Guaraní people to remain in a state of forced labour, it now has the responsibility to provide compensation for the harm suffered. Compensation should include appropriate measures to restore ancestral lands and ensure that communities are free, productive and self-sufficient. The State must allocate adequate financial, human and institutional frameworks in the region to ensure the success of this process.

E. Inter-ministerial Transition Plan for the Guaraní People, contingency plans and food security

67. The Bolivian Government must effectively involve the Guaraní people, including through APG, as established by the new Constitution, in evaluating the successes and weaknesses of the Inter-ministerial Transition Plan and in redesigning the Plan based on the evaluation results. The new structure of the Plan should ensure full and effective participation of APG representatives in the governance and management as well as programme and project-level structures, thereby implying the need to decentralize the Plan so that it is locally driven and monitored.

68. The Inter-ministerial Transition Plan must be refocused to resolve urgently the current food crisis affecting Guaraní communities in the Chaco region. The

ministries involved with the Plan must enhance their collaboration and synergy-building. These ministries can seek help from relevant United Nations agencies and technical and financial assistance.

69. The Government must determine the scale of and resolve the food and child malnutrition crisis currently affecting Guaraní peoples, a result of communities being expelled from the haciendas because of the recent *saneamiento*. All efforts in this regard should be undertaken in cooperation with Guaraní organizations, local NGOs and other relevant local agencies, as well as with relevant United Nations agencies, including FAO and WFP.

F. Development

70. The Bolivian Government, the prefectures of the relevant departments and the United Nations should support capacity development to strengthen and develop Guaraní institutions and leadership. Such support should be provided alongside the other development activities recommended below.

71. In accordance with the Constitution, and while land reform is not completed, the Government and the prefectures of the relevant departments should support the development of viable alternatives to obtain incomes and the creation of sustainable productive and commercial activities for indigenous peoples, including women, affected by forced labour practices.

72. While carrying out land reform, the Government must provide intensive support and training for at least the first five years while the establishment of key infrastructure, including Guaraní schools, health services, roads, housing and secure access to water, takes place. The intensive support should involve a well-prepared team of professionals who would live in the communities and provide a minimum of organizational, managerial and financial training for all land beneficiaries (women and men). Methodologies exist for this and are based on experiential learning techniques that have proved successful in other countries of the continent.

73. In accordance with their constitutional jurisdiction and with indigenous autonomies when they are established, both the Government and the prefectures of the relevant department should expand coverage of and ensure access to social services, including health care, bilingual education and social security. Mobile brigades should be established to provide such services to indigenous communities.

74. Indigenous communities in the exercise of their autonomy must have access to legal services to protect and defend their interests on a collective basis.

75. The Government, in coordination with APG, must provide Guaraní communities with roads that are formally part of the national network and hence have legal protection for "rights of way". At present the lack of clarity allows landowners to control the Guaraní people, as well as anyone who travels on the roads in question, as they are considered owners of these roads because they enjoy the support of the municipal authorities who maintain them.

76. The Government should enhance means of communication, including radio and telephones, guaranteeing access to Guaraní peoples in the Chaco region.

G. Participation and social dialogue

77. The Bolivian Government should seek to establish a dialogue among the parties involved in labour and land conflicts, including both workers' and employers' organizations. A central goal of such dialogue should be to improve the current situation of Guaraní peoples in the Chaco region. No agreement should be adopted without the free, prior and informed consent of the indigenous peoples involved.

78. Rural development initiatives must be undertaken with the genuine participation and free, prior and informed consent of Guaraní peoples. All interventions by the Government or the prefectures of the relevant departments must be demand-driven, rather than top-down approaches. In the context of the new Constitution, the development of Guaraní people must be regarded as a responsibility of Guaraní autonomies.

H. End discrimination on the basis of indigenous status

79. The Bolivian Government should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples. This should include the design and execution of priority anti-discrimination programmes, including affirmative action measures.

80. The Government must repeal or amend all discriminatory laws or practices, for example, the requirement that, in order to be registered with the Civil Registry, one must present a certificate of baptism.

81. Biometric accreditation excludes indigenous peoples, as many will not be able to travel to urban centres to register and may lack access to the conditions, such as electricity or identity cards, required to carry out the biometric accreditation. It is a discriminatory practice and should be amended or abandoned.

I. Regional cooperation and cross-border strategies

82. The Governments of Paraguay and the Plurinational State of Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border programme for the protection of indigenous peoples of the Chaco should be considered, with adequate financing. Such a programme must be in compliance with section VII of ILO Convention No. 169, which addresses contacts and cooperation across borders and, in particular, with article 32, which calls upon Governments to take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields; and the right of the United Nations Declaration on the Rights of Indigenous Peoples, especially as regards their free, prior and informed consent.

83. Given that the Ombudsman Office has authority on international issues such as the rights of Bolivian emigrants, the mission suggests that it also address cross-border indigenous issues. This extraterritorial action should be welcomed by the

Government of Paraguay because it can effectively help to eradicate forced labour practices in the Paraguayan Chaco. This must be undertaken with the agreement between the Government of Paraguay and the Bolivian Government and with the free, prior and informed consent of indigenous peoples in both countries.

84. Considering that the historical lands of the Guaraní peoples and other indigenous peoples are divided between Argentina, the Plurinational State of Bolivia, Brazil and Paraguay, policies and efforts in their favour should be designed within the Southern Common Market (MERCOSUR) and emerging regional integration organizations. In this regard, lessons regarding the participation of indigenous peoples can be drawn from other regional cross-border institutions, such as the Andean Community of Nations and the Bolivarian Alternative for Latin America (ALBA).

85. The United Nations and bilateral aid agencies should share relevant good practices from their experiences in different countries and, more importantly, should finance cross-border programmes.

J. Additional follow-up for the United Nations

86. The recommendations contained in the report reflect the view of the Permanent Forum with regard to addressing the situation of forced labour of indigenous peoples in the Chaco region. The Permanent Forum calls upon the United Nations country team in the country and especially OHCHR to promote the human rights of indigenous peoples generally and, in particular, the implementation of the recommendations contained in the present report. This is particularly urgent as, given the coming elections, conflict and tension are only likely to grow and the Guaraní peoples are vulnerable in any situation of conflict over patrimony rights.

87. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in the country, the goal of which should be the application of the United Nations Declaration on the Rights of Indigenous Peoples, which has been incorporated into Bolivian law, and the implementation of the recommendations of the Permanent Forum by the relevant agencies. The Bolivian Constitution itself provides the means to achieve the implementation of the Declaration and, under article 42, also obliges United Nations entities to work towards its implementation.

88. The United Nations agencies in the Plurinational State of Bolivia should, as a matter of urgency, coordinate their efforts with regard to the situation of indigenous peoples in the Bolivian lowlands to assist in protecting their human rights in the face of the harassment to which they are subjected.

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Study on the extent to which climate change policies and projects adhere to the standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples

Note by the secretariat

Summary

At its seventh session, the Permanent Forum on Indigenous Issues appointed Mr. Hassan Id Balkassm and Ms. Paimaneh Hasteh, members of the Permanent Forum, as special rapporteurs to undertake a study to determine whether climate change policies and projects adhere to the standards in the United Nations Declaration on the Rights of Indigenous Peoples. At the eighth session of the Permanent Forum, Mr. Id Balkassm and Ms. Hasteh presented a concept paper outlining the framework for the study (E/C.19/2009/5). Mr. Id Balkassm and Ms. Hasteh were of the view that the impact of climate change mitigation measures on indigenous peoples and on their land, territories and resources highlights the extent to which climate change threatens indigenous peoples, particularly since the participation of indigenous peoples in climate change law and policies remains deficient. The study builds on the concept paper by Mr. Id Balkassm and Ms. Hasteh, examining in more detail whether current and proposed climate change policies and projects adhere to the Declaration.

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I. Climate change

1. The definition of climate change under the United Nations Framework Convention on Climate Change is: "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods".[1]

2. Climate change is mainly caused by greenhouse gas emissions,[2] owing largely to the increase in the combustion of fossil fuels.[3] The Intergovernmental Panel on Climate Change posits that causes of temperature rise include human activity, including power generation, deforestation, transport, agriculture and industry.[3]

3. Existing and projected changes as a result of climate change include:[3]

- Contraction of snow-covered areas and sea ice
- Sea-level rise and higher water temperatures
- Increased frequency of hot extremes
- Heavy precipitation events and increase in areas affected by drought
- Increased intensity of tropical cyclones.

II. International climate change law and policy

4. The Framework Convention, agreed in 1992, provides the framework for the international response to climate change.[4] It does not set out specific obligations and strategies, which are to be addressed under subsequent agreements. It aims to "stabiliz[e] greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous [...] interference with the climate system" (article 2). The Framework Convention has been ratified by 192 States.

5. International climate change law and policy revolves around the twin strategies of mitigation (a reduction of greenhouse gas emissions) and adaptation (an increase in the capacity to adapt to climate change). Under the Framework Convention's equity principle, developed States, as the principal producers of greenhouse gases historically and the most resource rich, are to carry a heavier burden in mitigation and adaptation strategies, including assistance to poorer countries and the development of technology.

6. The Kyoto Protocol to the Framework Convention[5] detailed international climate change measures between 2008 and 2012, setting mandatory greenhouse gas emission targets for developed States, establishing mechanisms to achieve this,

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[1] United Nations, *Treaty Series*, vol. 1771, No. 30822.

[2] Intergovernmental Panel on Climate Change, "Climate change 2007 — synthesis report", adopted by Plenary XXVII (2007).

[3] Ibid., *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the IPCC*, S. Solomon and others, editors (Cambridge, Cambridge University Press, 2007).

[4] D. Freestone, "The international climate change legal and institutional framework: an overview", *University of New South Wales Faculty of Law Research Series*, No. 38 (2009).

[5] United Nations, *Treaty Series*, vol. 2303, No. 30822.

including carbon trading and the clean development mechanism (permitting developed States to achieve their emissions targets through investment in emissions reductions in developing States) and developing monitoring, reporting and verification measures. It is ratified by 190 States.

7. In 2007 the parties to the Framework Convention adopted the Bali Action Plan under which they were to reach agreement on, at the end of the fifteenth session of the Conference of the Parties in 2009, long-term emissions reductions, mitigation and adaptation strategies, technology transfer and development and appropriate financing and investment.[6]

8. The fifteenth session of the Conference of the Parties to the Framework Convention did not reach a final agreement on all issues, nor on proposals for the reduced emissions from deforestation and degradation (REDD) (deforestation and forest degradation has been estimated to contribute 18 per cent of annual emissions of carbon dioxide),[7] although a REDD agreement is close to being finalized. However, the majority of States agreed in the Copenhagen Accord, for example, that most developed States commit to implement emissions targets and provide resources.

9. International climate change policy and law are highly politicized. The competing interests behind positions on climate change translate into numerous contentious issues such as contests over scientific assessments of the severity, and potential severity, of climate change. Developed States are particularly concerned with the economic burden associated with responding to climate change. Developing States seek not to be hampered in their development by restrictions on their use of energy when developed States were not so hampered, citing discrimination, but simultaneously see their interests align with measures to mitigate and adapt to climate change. The lowest carbon emitters with the greatest vulnerability to climate change impacts, including small island developing States, are some of the States calling for stronger commitments. Oil-producing States are concerned about the economic impact of lower oil use resulting from climate change mitigation measures. Consequently, climate change policy may be determined as much by political compromise as by the need to reduce the impacts of climate change.

10. A number of climate change mitigation and adaptation measures have been implemented already from bodies as diverse as the Global Environment Facility, the World Bank to the United Nations to State development funds. These include the establishment of funds to implement and manage mitigation and adaptation strategies, carbon markets, emissions offset regimes, caps on carbon emissions, pilot REDD mechanisms and so on.[4] There are also a number of voluntary carbon offset measures being developed and implemented at the sub-State level. Domestic regulatory regimes to address climate change vary.

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[6] Outcome of the thirteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, decision 1/CP.13 (Bali Action Plan).

[7] See Meridian Institute, "Reducing emissions from deforestation and forest degradation (REDD): an options assessment report", prepared for the Government of Norway, 2009.

III. Climate change and indigenous peoples

11. Many indigenous peoples face the most critical consequences of climate change. Climate change can aggravate already difficult situations experienced by indigenous peoples, as some of the poorest and most marginalized groups in the world, often also living in areas most affected by rising temperature. As already stated, "[i]ndigenous peoples, who have the smallest ecological footprints, should not be asked to carry the heavier burden of adjusting to climate change".[8] A sketch of the climate and environmental changes, local observations and impacts being felt by indigenous peoples in different regions, and an outline of the various adaptation and mitigation strategies that are currently being implemented by communities as they use their traditional knowledge and survival skills to trial adaptive responses to change is available in the *Advance Guard Compendium* for further reading.[9]

12. Climate change mitigation and adaptation measures potentially impact on indigenous peoples' rights. For example, REDD policies can particularly affect indigenous peoples given they oftentimes inhabit forested areas, their close relationship to forests, as the environment that sustains them, and their use and conservation of them. There is a concern that REDD credits-based systems could lead to land-grabs of indigenous forested territories, and their conversion into plantations.[10] Criticisms have already been levelled at international REDD policies, including those that are required to comply with some indigenous peoples' rights standards,[11] such as the World Bank,[12] and the United Nations Collaborative Programme on Reducing Emissions and Forest Degradation in Developing Countries (UN-REDD Programme) (although the obligation stems from policy rather than rules).[13] On the other hand, well-designed REDD-related forestry programmes can also support indigenous peoples' rights, discussed below.

13. Indigenous peoples have participated to varying degrees in international and domestic climate change measures. Their inclusion in policy and law formation is not always guaranteed. Indigenous peoples' participation appears to be increasing in some climate change-related initiatives at the international level, such as those established by the World Bank and under UN-REDD, sometimes in response to indigenous peoples' demands for inclusion.[10]

14. Numerous indigenous peoples participated in the fifteenth session of the Conference of the Parties to the Framework Convention, and language referencing the need for indigenous peoples' and local communities' engagement to be included

[8] See *Official Records of the Economic and Social Council, 2008, Supplement No. 43* (E/2008/43), para. 6; also report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61), para. 51.

[9] Kirsty Galloway McLean, *Advance Guard: Climate Change Impacts, Adaptation, Mitigation and Indigenous Peoples — A Compendium of Case Studies* (United Nations University Institute of Advance Studies Traditional Knowledge Initiative, Darwin, Australia, 2010).

[10] International Institute for Environment and Development Briefing "COP 15 for journalists: a guide to the UN climate change summit" (November 2009).

[11] Tom Griffiths, "Seeing 'REDD'? forests, climate change mitigation and the rights of indigenous peoples and local communities", Forest People's Programme, 2008.

[12] World Bank Revised Operational Policy and Bank Procedure on Indigenous Peoples OP/BP 4.10 (2005).

[13] UN-REDD Programme, Global Indigenous Peoples' Consultation on the topic "Reducing Emissions from Deforestation and Degradation", held in Bagris City, Philippines, 12-14 November 2008.

in a draft REDD agreement, included references to the Declaration on the Rights of Indigenous Peoples.[14] However, indigenous peoples continue to call for more comprehensive reference to indigenous peoples' rights in all documents of the Conference of the Parties.[15]

15. Indigenous peoples have much to offer in terms of best practices for mitigation and adaptation measures to combat climate change if they are included in related international law and policy development, especially if they comply with indigenous peoples' rights.

16. Indigenous peoples have consistently called for climate change policy and law to comply with indigenous peoples' rights as set out, for example, in the Declaration.[16] They have also called for indigenous peoples' inclusion in the formation and implementation of climate change policy and law at both the domestic and international level, and that indigenous peoples' governing bodies have the "right to enact such laws and regulations as appropriate and adopt mitigation and adaptation plans within their jurisdictional authority [...]".[16]

17. Indigenous peoples' responses to climate change have been articulated in a number of instruments, reports and attempts at international litigation, not least in the Anchorage Declaration of the Indigenous Peoples' Global Summit on Climate Change held in Anchorage, Alaska in April 2009.

18. Indigenous peoples' views of some aspects of climate change laws and policies differ. As Tauli-Corpuz has stated, there is no one indigenous position on emissions trading.[17] Consistently with an indigenous peoples' right to self-determination, each peoples' perspective commands respect.

19. Some indigenous peoples philosophically object to market-based climate change policies on the grounds that they commodify interests in, for example, trees, undermining their cultural and spiritual value. There is also an objection to trading schemes that permit continued greenhouse gas emissions, for example, by offsetting those practices against the retention of carbon sinks, such as forests. Other indigenous peoples see opportunities in climate change mitigation and adaptation policies, including market-based initiatives and the use of resources on their lands, for their much-needed economic, social and cultural development.

IV. Climate change and human rights

20. International human rights law does not clearly articulate a right to a sustainable environment (with the exception of environmental guarantees in some regional instruments).[18] However, numerous rights are impacted by climate change, especially in the indigenous peoples' context.

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[14] Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, 15 December 2009, available from http://unfccc.int/resources/docs/2009/awglca8/eng/l07a06.pdf.

[15] International Indigenous Peoples Forum on Climate Change, final statement at the fifteenth session of the Conference of the Parties, 31 December 2009.

[16] International Indigenous Peoples Forum on Climate Change, statement of 27 September 2009.

[17] V. Tauli-Corpuz, "Indigenous peoples and carbon trading", *REDD-Monitor* (8 April 2009).

[18] P. Havemann, "Ignoring the mercury in the climate change barometer: denying indigenous peoples' rights", *Australian Indigenous Law Review*, vol. 13, No. 1 (2009).

21. There are difficulties in framing climate change impacts as human rights issues. As the Office of the High Commissioner for Human Rights has pointed out, it is difficult to frame climate change effects as human rights "in the strict legal sense" given the "complex causal relationships" between emissions and effect.[19] Moreover, "adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred".[20] The financial burden imposed on States to mitigate and adapt to climate change impacts could lessen the capacity of States to realize economic, social and cultural rights.[20]

22. The international system, including civil society, has already concluded considerable work on the relationship between climate change and human rights, calling for a human rights consistent approach.[21]

V. The obligation to comply with the Declaration

23. The Declaration is the most universal, comprehensive and fundamental instrument on indigenous peoples' rights and forms a part of human rights law.

24. The juridical force of "soft law instruments", which are not formally legally binding, is contestable, as are the boundaries between "soft law" and "hard law", which is legally binding as a matter of formal international law. Moreover, the question whether international bodies, such as the Conference of the Parties to the Framework Convention, are bound by international human rights law remains contested, not least because human rights generally and principally only impose legal obligations on States.[22]

25. Nonetheless, there are compelling legal and political reasons why international and domestic climate change law and policy ought to comply with the Declaration. As the Permanent Forum has stated, "[t]he binding value of the Declaration must be seen in the wider normative context of the innovations that have taken place in international human rights law in recent years".[23]

26. The Charter of the United Nations states, in Article 1, paragraph 3, as one of the principal objectives of the Organization, the achievement of "international cooperation [...] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Any actions undertaken under United Nations auspices, including those to address climate change, should seek to implement the "constitutional" objectives of its Charter, including the Declaration as a component of the corpus of international human rights.

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[19] A/HRC/10/61, para. 70; J. Knox, "Climate change and human rights law", *Virginia Journal of International Law*, vol. 50, No. 1 (2009).

[20] A/HRC/10/61, para. 70.

[21] For example, Deputy United Nations High Commissioner for Human Rights "Climate change and human rights", address of the thirteenth session of the Conference of the Parties to the Framework Convention, December 2007.

[22] A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006).

[23] See *Official Records of the Economic and Social Council, 2009, Supplement No. 43* (E/2009/43), annex, para. 6.

27. The Declaration has institutional legitimacy as an embodiment of the collective will of the United Nations General Assembly.

28. The Declaration also acquires legitimacy from the processes from which it was developed, the participation of indigenous peoples in the negotiations, the substance of the Declaration and the extent to which States, State bodies, international institutions, transnational advocacy groups, civil society and indigenous peoples have engaged with it. The Declaration was developed over a 20-plus-year period following a robust process. Equally, the participation of States and indigenous peoples from all regions of the world, international institutions, the academy and civil society in negotiations on the Declaration reflect that it is the outcome of inclusive deliberative processes, justifying its authority.[24] The rights expressed in the Declaration embody the justice of indigenous peoples' claims in the light of the historical denial of their international juridical status and their experiences of oppression.[25] Finally, the Declaration's legitimacy is reflected in, and enhanced by the interaction of State, international institutional, non-State actor and indigenous peoples with it in political and legal settings. For example, international human rights bodies,[26] United Nations bodies,[27] State courts,[28] and indigenous peoples, inter alia, have applied, or sought to apply, the Declaration in a vast array of circumstances. These interactions reflect a "common body of opinion regarding the content of the rights of these peoples".[29]

29. Article 42 of the Declaration stipulates that the United Nations and States "shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration". The Framework Convention institutions and States that participate in the making of international and domestic law and policy on climate change are therefore, under the Declaration, required to promote respect for, and the full application of, the Declaration.

30. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated "some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law".[30]

31. General principles of international law are also a binding source of international law recognized in Article 38, paragraph 1, of the Statute of the International Court of Justice. As has been noted, "[a]cts and declarations of a non-binding nature promulgated by international organizations are a good source" of

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[24] J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, translated by W. Rehg (Cambridge, Massachusetts, MIT Press, 1998).

[25] A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, Cambridge University Press, 2004).

[26] For example, the Committee on the Elimination of Racial Discrimination in relation to the United States, document CERD/C/USA/CO/6, and the Human Rights Council in its Universal Periodic Review of States.

[27] For example, the United Nations Development Group, *Guidelines on Indigenous Peoples' Issues*, 2008.

[28] *Cal and others v. the Attorney General of Belize and the Minister of Natural Resources and the Environment*, 2007, Claims Nos. 171 and 172 of 2007.

[29] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/9/9), para. 18.

[30] Ibid., para. 41.

general principles of international law.[31] Certain norms in the Declaration have been recognized as reflecting general principles of international law, such as land rights by the Supreme Court of Belize.[32]

32. The Declaration specifically applies to indigenous peoples' many existing human rights norms articulated in binding international human rights treaties. For example, the Inter-American Court of Human Rights and the Committee on the Elimination of Racial Discrimination have applied the right to freedom from discrimination together with property rights to require respect for indigenous peoples' communal and customary land title, consistently with the Declaration.[33] To the extent that the Declaration reflects and influences interpretations of international human rights treaties, it is, and can be, applied as binding international law.

33. States' policies and laws on climate change will come under human rights scrutiny, including assessments of their conformity with the Declaration. For example, the Human Rights Council, in its universal periodic review, has called upon States to support the Declaration where they have not done so already.[34] The Committee on the Elimination of Racial Discrimination has already assessed States' compliance with human rights treaties with reference to the Declaration,[35] and specifically in relation to climate change policies allegedly causing a negative impact on indigenous peoples.[36] The Permanent Forum will also assess the effectiveness of the Declaration,[37] and the International Labour Organization (ILO) monitoring bodies apply similar norms under the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169).

34. To the extent that States are bound by human rights under domestic law, sourced in international, constitutional, legislative, executive or judicial norms, they are required to conform to human rights, which can include Declaration rights, especially where a consistent interpretation is possible.

35. The Framework Convention was adopted in the context of significant international policymaking on the environment in Rio de Janeiro in 1992, also including the Rio Declaration and Agenda 21,[38] which included indigenous peoples, guarantees for the protection of their rights, and acknowledgement of the interrelationship between indigenous peoples' well-being and the environment.[39]

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[31] S. Perkins, "International Human Rights Law and Article 38 (1) of the Statute of the International Court of Justice", in Schaffer and Snyder (eds.), *Contemporary Practice of Public International Law* (Dobbs Ferry, New York, Oceana Publications, 1997).

[32] See footnote 28 above, para. 127.

[33] For example, Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Ser. C (No. 172) (2007); ibid., *Mayagna (Sumo) Awas Tingni Cmty v. Nicaragua*, Ser. C (No. 79) (2001).

[34] For example, Draft report of the Working Group on the Universal Periodic Review: New Zealand (A/HRC/WG.6/5/L.7).

[35] For example, see footnote 26 above.

[36] Committee on the Elimination of Racial Discrimination in relation to Indonesia, document CERD/C/IDN/CO/3, para. 17.

[37] See *Official Records of the Economic and Social Council, 2009, Supplement No. 43* (E/2009/43), annex, para. 21.

[38] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions adopted by the Conference*, United Nations publication, Sales No. E.93.I.8 and corrigendum, resolution I, annexes I and II.

[39] Ibid., annex I, Principle 22.

The Convention should comply with related instruments in particular, as a matter of robust and consistent policy.

36. While the Declaration may not be formally binding on the Framework Convention international institutional infrastructure as a matter of law, the efficacy of the international system as a whole requires that all the various international legal "subsystems" — including human rights and climate change — act consistently.[40] In other words, the authority of the international legal system requires that it reinforce itself by complying with international norms, even if they emanate from different sub-systems. Specifically, if the Convention and related agreements do not comply with other relevant international principles, such as those set out in the Declaration, it suggests that international law generally is not authoritative, to the detriment of the Convention, the Conference of the Parties and international legal system as a whole. The International Law Commission has recommended "systemic integration" between various international law sub-systems based on article 31, paragraph 3 (c), of the Vienna Convention on the Law of the Treaties that in interpreting a treaty, "there shall be taken into account [...] (c) any relevant rules of international law applicable in the relations between the parties".[41]

VI. Climate change and indigenous peoples' rights

37. An assessment of climate change law and policy compliance with the Declaration is suggested here. It must be borne in mind that some of the effects of climate change remain unknown and climate change policy and law is evolving, making precise evaluation difficult. Analysis of specific domestic laws and policies would require further focused research.

38. Less focus is placed on generic human rights issues raised by climate change, and related mitigation and adaptation policies and law, such as those in relation to the right to life, health, food, housing and water. Such analyses have been undertaken in some depth already. Nonetheless, it must be recognized that all rights are indivisible, interdependent and interrelated,[42] as well as inalienable and inherent. Moreover, as mentioned, indigenous peoples are particularly vulnerable to human rights violations sourced in climate change as well as to strategies to mitigate and adapt to climate change.[43]

39. The Declaration "sets out several rights and principles of relevance to threats posed by climate change".[44]

40. Indigenous peoples have pointed out that they are "holders of collective rights, including sovereign and inherent rights to land and treaty rights, covenants and agreements. Protecting these rights also strengthens the capacity and resilience of indigenous peoples and local communities to respond to climate change".[15] They

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[40] Study Group of the International Law Commission on the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law" (A/CN.4/L.682 and Corr.1 and Add.1).

[41] United Nations, *Treaty Series*, vol. 1155, No. 18232.

[42] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I)), chap. III.

[43] See A/HRC/10/61.

[44] Ibid., para. 53.

have asserted their jurisdiction to make laws and policies to respond to climate change.[15]

41. Climate change mitigation and adaptation law and policy has the potential to be supportive of indigenous peoples' rights in that, if done in compliance with such rights, it can assist their realization by, for example, giving effect to indigenous peoples' self-determination and securing respect for indigenous peoples' lands, territories and resources.[45] Moreover, mitigation and adaptation measures could reduce the threats posed by climate change to indigenous peoples, supporting the rights in the Declaration. Indigenous peoples possess knowledge essential to responses to climate change, which a rights-based approach to climate change could seize. Such approaches are mandated in current REDD draft agreements.

42. Conversely, climate change and mitigation and adaptation measures could already, or in the future, lead to violations of the Declaration. Further, if climate change mitigation and adaptation measures are inadequate to combat climate change, States may also find themselves in violation of the Declaration.[46]

43. Overall, the philosophical premises underlying climate change mitigation and adaptation policy and law must be tested. States must be aware of indigenous peoples' sensitivity that climate change law and policy simply provides the latest justification for state assertions of control over indigenous peoples, a form of neo-colonialism/neo-domination.

44. Difficulties remain for indigenous peoples to enforce the Declaration or seek legal remedies where climate change law and policy does not comply. For example, while the UN-REDD Programme has committed to compliance with the Declaration, indigenous peoples do not have a direct avenue to enforce this commitment, except perhaps indirectly under the State-focused international human rights mechanisms.

Indigenous peoples' right to participation

45. Indigenous peoples' right to participate in international and domestic climate change policy and law-making and implementation has its genesis in human rights, indigenous peoples' rights and good governance, and is supported by much international and domestic theory and practice on law and policymaking.

46. An indigenous peoples' right to participate in domestic and international climate change policy and law formation arises out of numerous articles of the Declaration including, inter alia, articles 3-5, 18-20, 23, and 30-34.[47] Indigenous peoples' right to participate in decisions that affect them is set out in article 18 in particular, which states:

> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions.

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[45] V. Tauli-Corpuz and A. Lynge, "Impact of climate change mitigation measures on indigenous peoples and their territories and lands" (E/C.19/2008/10), para. 36.

[46] Survival International, "The most inconvenient truth of all: climate change and indigenous people", 2009.

[47] Report of the International Expert Group Meeting on Indigenous Peoples and Climate Change (E/C.19/2008/CRP.9).

47. The use of hypothetical language — "which would affect their rights" — suggests that indigenous peoples must participate before decisions are taken and even when there is only a potential impact on them, indicating the wide-application of the right. Article 18 also requires that indigenous peoples' own self-determining institutional and decision-making structures are the vehicles through which indigenous peoples must participate, consistently with an indigenous peoples' right to self-determination.

48. The right to participate is closely related to indigenous peoples' right to self-determination and right to free, prior and informed consent.[48] As a whole, they reflect that indigenous peoples, as peoples under international law, have the right to determine their own future, requiring participation in any and all relevant processes that have the potential to impact on them. It is a right to be exercised collectively, distinct from individuals' rights to participate in decision-making processes.

49. An indigenous peoples' right to participate is nonetheless supported by, and related to, general human rights and principles of good governance, such as that expressed in article 25 of the International Covenant on Civil and Political Rights. Indeed, a State's ability to represent indigenous peoples, as self-determining peoples, is difficult given that indigenous peoples are often non-dominant within States and have their own, or right to their own, autonomous decision-making structures.

50. Given its relationship to self-determination, and the international status that accrues to peoples, an indigenous peoples' right to participate applies to international law and policymaking, such as that undertaken under the auspices of the Framework Convention.

51. Consistently with the Declaration, the broader international environmental legal regime has set out standards requiring indigenous peoples' participation, as mentioned above. The Intergovernmental Panel on Climate Change Fourth Assessment Report stated that, "[i]ncorporating indigenous knowledge into climate change policies can lead to the development of effective adaptation strategies that are cost-effective, participatory and sustainable".[3] The Framework Convention, in article 6, mandates States to promote and facilitate "public participation in addressing climate change and its effects and developing adequate responses". Further, the current draft REDD negotiating text calls for the full and effective participation on indigenous peoples in REDD-related activities. The Permanent Forum recommended in 2008 that "[s]cientists, policymakers and the international community as a whole should undertake regular consultations with indigenous peoples so that their studies and decisions will be informed by indigenous peoples' traditional knowledge and experiences".[49] The Intergovernmental Arctic Council, also addressing climate change, has accredited a number of indigenous organizations as permanent participants, providing for "the active participation and full consultation with the arctic indigenous representatives".[50] The World Bank now calls for the inclusion of indigenous peoples in climate change law and policy.[51] The

[48] Report of the International Workshop on Methodologies regarding free, prior and informed consent and indigenous peoples (E/C.19/2005/3).

[49] See *Official Records of the Economic and Social Council, 2008, Supplement No. 43* (E/2008/43), para. 9.

[50] See http://arctic-council.org/section/the_arctic_council/.

[51] "World Bank affirms support to indigenous peoples in designing climate change responses", Press release No. 2010/149/SDN (18 November 2009).

UN-REDD Programme Policy Board includes indigenous peoples' representatives. The report of the High Commissioner on Human Rights states that "[p]articipation in decision-making is of key importance in efforts to tackle climate change",[52] before mentioning the Declaration's provisions on free, prior and informed consent. Equally, some domestic climate-change measures are providing for indigenous peoples' participation.[53]

52. Indigenous peoples' participation in international law-making is supported by precedent such as that in the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples, and within the World Intellectual Property Office, the Convention on Biodiversity,[54] and the Human Rights Council in particular. The right to participate is supported in wider human rights jurisprudence.[55] Moreover, ILO Convention No. 169 sets out, in article 6, obligations on States to enable indigenous peoples' participation in policies and programmes that concern them.

53. The right to participate is necessary to secure the authority of climate change law and policy for, and on, self-determining indigenous peoples, as well as other individuals and groups.[56] Inclusion ensures that international law and policy does not impose outcomes on indigenous peoples, given they are unlikely to support policies they have not considered. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples has noted,

> without the buy-in of indigenous peoples [...], even [Government programmes] that are intended to specifically benefit indigenous peoples [...] can be crippled at the outset. Invariably, it appears that a lack of adequate consultation leads to conflictive situations, with indigenous expressions of anger and mistrust, which, in some cases, have spiralled into violence (A/HRC/12/34, para. 36).

54. Indigenous peoples' input is likely to result in better law and policymaking in the long run as it ensures the contribution of some of the most affected by climate change and corresponding mitigation and adaptation strategies, who best comprehend the problem, its consequences and the contextual and historical factors that will contribute to their solution. In this way, indigenous peoples' participation will also increase the level of expertise that goes into international law and policymaking on climate change.

55. Indigenous peoples have an interest in generic climate change law and policy formation and implementation because of their particular vulnerability to climate change, that indigenous peoples can share their best practices on climate change mitigation and adaptation techniques and that international climate change policy and law have the potential to significantly impact on their enjoyment of their rights. Under the Declaration, indigenous peoples are entitled to participate in, for

[52] A/HRC/10/61, para. 79.

[53] "Background Analysis of REDD Regulatory Frameworks", report for Terrestrial Carbon Group and UN-REDD (2009).

[54] See, in particular, the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, adopted by the Conference of the Parties at its sixth session.

[55] For example, see footnote 25 above.

[56] P. Habermas, quoted in A. Barron "Foucault and the Law" in J. Penner and others (eds.) *Introduction to Jurisprudence & Legal Theory: Commentary and Materials* (Oxford, Oxford University Press, 2002).

example, all international and domestic law and policy development to respond to climate change, including potential impacts and the gathering and preparation of research on climate change. Thus, indigenous peoples' participation should be provided for in, inter alia, the Conference of the Parties to the Framework Convention and related negotiations, subsidiary bodies such as those providing scientific and technological advice, and development of policies on REDD, including those launched by the United Nations, the World Bank and States.

56. Indigenous peoples have called for the establishment of "formal structures and mechanisms for and with the full and effective participation on indigenous peoples", including engagement of the International Indigenous Peoples' Forum on Climate Change in an advisory role.[57]

57. Indigenous peoples' right to participate is likely to grow stronger in more localized contexts as the potential that climate change law and policy will more concretely impact on indigenous peoples' rights increases. A report commissioned by UN-REDD states that "consultation with [indigenous peoples], as well as other stakeholders, is necessary to maintain the legitimacy and transparency of a proposed national or subnational REDD scheme".[52] At the domestic and especially the local level, indigenous peoples' right to participate could well, in many cases, translate into a right to free, prior and informed consent.

58. The participation of indigenous peoples in international law and policy formation and implementation of climate change, under the Declaration, requires funding.

59. Article 7, paragraph 6, of the Framework Convention provides for the participation of observers at the various meetings of the Conference of the Parties, including non-governmental organizations. Some indigenous peoples' organizations have acquired observer status.

60. In practice, however, indigenous peoples were not adequately consulted in the creation of the Framework Convention or in Kyoto Protocol negotiations, and have had to resort to protest to facilitate their appropriate inclusion into international climate change policy and law formation. Calls for more robust participation mechanisms, such as an expert group on indigenous peoples and climate change, have been rejected. In a positive signal, which must be continued and expanded, indigenous peoples' organizations addressed the plenary of States in a meeting in Bali in September 2009, have met with the chairs of various related working groups, and have proposed language for inclusion in Framework Convention instruments (including compliance with the rights of indigenous peoples).[58] Nonetheless, avenues for indigenous peoples' formal and equal participation in the negotiations remain suboptimal.

[57] Anchorage Declaration of the Indigenous Peoples' Global Summit on Climate Change, held in Anchorage, Alaska, 20-24 April 2009.

[58] See Ad Hoc Working Group on Long-Term Cooperative Action, Non-paper No. 33, "Contact Group on a Shared Vision for Long-Term Cooperative Action", Revised annex 1 to document FCCC/AWGLCA/2009/INF.2, Non-paper by the Facilitator, "Proposed text amendments and additions presented by the International Indigenous Peoples Forum on Climate Change" (Barcelona, 2-6 November 2009).

The right to self-determination

61. Self-determination is the key provision in the Declaration from which every other right flows. Its meaning in the indigenous peoples' context varies according to the circumstances of the particular indigenous peoples in question, albeit subject to the principle of equality, and includes how they themselves envisage their claim to self-determination. It can range from full sovereignty and independence, especially where indigenous peoples are in a non-self-governing or trust territory and/or the State acquiesces, to autonomy and self-government under article 4 of the Declaration, to full participation in State political processes. States' territorial integrity is mentioned in article 46, paragraph 1. Common to all interpretations of self-determination is that it has a political dimension and expresses indigenous peoples' claims to determine their own destiny.[59]

62. Where climate change threatens the very existence of indigenous peoples as is possible, for example, in low-lying atoll States, indigenous peoples' right to self-determination, which requires their continuing existence as a peoples, could be undermined altogether, especially if the international community does not provide alternative spaces for indigenous peoples to practice their self-determination. Similarly, competing claims to sovereignty over Arctic areas, especially areas that have become more accessible due to climate change, can undermine indigenous peoples' self-determination.

63. Where international, State or sub-State climate change policies and laws are to apply in areas usually regulated by indigenous peoples' customary laws, conflicts between the customary and non-indigenous laws and policies can arise.[60] Where the non-indigenous laws take precedence over the indigenous laws, at least as a matter of State constitutional or other laws, the application of non-indigenous laws undermine an indigenous peoples' right to self-determination.[60]

64. Policies that are to apply to indigenous peoples or on their territories that do not receive indigenous peoples' input and approval undermine indigenous peoples' self-determination and can aggravate state oppression of peoples.

65. Climate change law and policies can support an indigenous peoples' right to self-determination. For example, if REDD funding goes directly to indigenous peoples, represented by their own authorities under indigenous law, it could be viewed as recognizing the authority of indigenous peoples over their own lands, territories and resources (in this case forests), and their self-determination. Conversely, if REDD funding is channelled through the state and the state does not recognize indigenous peoples' authority over their forests or, contrary to indigenous peoples' claims, support non-indigenous ownership over indigenous peoples' lands, territories and resources, indigenous peoples' self-determination may be perceived to be undermined. Measures that support local government and/or other civil society organizations over indigenous peoples' representative organizations can similarly run the risk of undermining indigenous peoples' self-determination.

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[59] James Anaya, "The right of indigenous peoples to self-determination in the post-declaration era", in C. Charters and R. Stavenhagen (eds.) *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (International Work Group for Indigenous Affairs, Copenhagen, 2009).

[60] E. Savaresi and A. Morgera, "Ownership of land, forest and carbon", in J. Costenbader (ed.) *Legal Frameworks for REDD: Design and Implementation at the National Level* (IUCN Environmental Policy and Law Paper No. 77, 2009).

66. The right to self-determination includes the right of indigenous peoples to "freely pursue their economic, social and cultural development". It is supported by article 20, under which indigenous peoples are entitled to "engage freely in all their traditional and other economic activities", and article 23, which articulates indigenous peoples' right to determine and develop priorities and strategies for exercising their right to development, entitling indigenous peoples to also utilize their resources for development. Article 32, paragraph 1, states "[i]ndigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources". In some cases, development could come from the utilization of fossil-fuel resources on indigenous peoples' territories and indigenous peoples' participation in mitigation and adaptation strategies. Climate change law and policy attempting to limit indigenous peoples' use of their resources could undermine their right to self-determination if it is devised without indigenous peoples' participation and, where necessary, consent.

Rights to lands, territories and resources

67. The Declaration's provisions concerning land rights include articles 10, 25 to 30 and 32. Broadly stated, they:

- Prohibit the forcible removal of indigenous peoples from their lands without their free, prior and informed consent and agreement on just and fair compensation including, where possible, the option of return
- Articulate the indigenous peoples' right to maintain and strengthen their spiritual relationship with their lands, territories and resources
- Set out indigenous peoples' right to their traditionally owned, occupied or otherwise used or acquired lands, territories and resources
- Express indigenous peoples' right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other use, as well as those which they have otherwise occupied
- Require States to implement processes to recognize and adjudicate indigenous peoples' rights to their lands, territories and resources
- Describe indigenous peoples' right to redress for indigenous peoples' lands, territories and resources which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent
- Set out indigenous peoples' rights to the conservation and protection of the environment, including their lands, territories and resources
- Prohibit military activities in indigenous peoples' lands or territories unless certain criteria are met
- Set out indigenous peoples' right to develop their lands, territories or resources, including the obligation to acquire indigenous peoples' free, prior and informed consent before approving projects affecting indigenous peoples' lands, territories and resources.

68. Indigenous peoples' territories must be interpreted broadly, consistently with indigenous peoples' understanding to refer to "the whole of the symbolic space in which a particular indigenous culture has developed, including not only the land but

also the 'sacred landscape' that corresponds to their world view".[61] Context will determine the extent of indigenous peoples' claims to their territories under the Declaration where non-indigenous persons hold those lands today as a matter of domestic State law but acquired without the relevant indigenous peoples' consent. Context will also be highly relevant in determining the exact redress appropriate for takings of indigenous peoples' lands under article 28. In both cases, indigenous peoples' preferences and understanding of their own entitlements should be paramount considerations. Article 46, paragraph 2, might also be relevant.

69. Measures to clarify indigenous peoples' land title, and to demarcate indigenous peoples' lands, must respect indigenous peoples' customary land ownership practices to comply with the Declaration. Caution is required to ensure that legal tests to establish indigenous peoples' land, territories and resource rights are not restrictive and biased towards non-indigenous conceptions of land ownership, lest they function to unjustly deprive indigenous peoples of their legitimate claims to their territories and resources, including those that they have historically used.[62]

70. Evolving customary international law supports the land rights provisions in the Declaration.[63]

71. In the context of climate change indigenous peoples have stated that "[s]ecuring our rights to our ancestral lands, forests, waters and resources provides the basis for sustainable local social, cultural, spiritual and economic development, and some insurance against our vulnerability to the impacts of climate change".[63]

72. Diminishing indigenous peoples' land areas as a result of climate change, in the case of "sinking" islands and melting ice, highlight the need for international and domestic climate change and policy to aggressively mitigate the impact of climate change, in the interests of realizing the lands, territories and resource rights in the Declaration. The loss of these territories has a significant consequence for other rights also, such as indigenous peoples' traditional activities related to resources, including hunting and fishing.

73. The potential synergies between climate change mitigation and the protection and promotion of indigenous peoples' rights to their lands, territories and resources is apparent in the Inter-American Court of Human Rights decisions in *Awas Tingni v. Nicaragua* and *Saramaka v. Suriname*, where indigenous peoples successfully sought recognition of their land rights in a situation where they were the subject of unauthorized (by the peoples) logging concessions.[63]

74. Indigenous peoples' land, territories and resources are particularly vulnerable to climate change policies and laws, especially where land title remains to be vested in them or is otherwise uncertain or challenged. Climate change policies to build dams and wind farms, to invest in trees, to plant for biofuel, for example, can all create incentives to deny recognition to indigenous peoples' lands and relocate them.[65] A native title lawyer has noted that emissions trading schemes may "further

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[61] A. Regino Montes and G. Torres Cisneros, "The United Nations Declaration on the Rights of Indigenous Peoples: the foundation of a new relationship between indigenous peoples, State and societies" in C. Charters and R. Stavenhagen (eds.), footnote above.

[62] A. Erueti, "The demarcation of indigenous peoples' traditional lands: comparing domestic principles of demarcation with emerging principles of international law", *Arizona Journal of International and Comparative Law*, vol. 23, No. 3 (2006).

[63] See footnote 15 above, para. 11.

decrease indigenous peoples' rights and interests in land, through extinguishment of native title and loss of access to the use of natural resources. Native title is [...] susceptible to extinguishment".[64]

75. Conversely, secure and clear indigenous peoples' land and forestry rights can better facilitate their retention, which can be positive from a REDD perspective, and have been considered an indicia of a State's readiness to implement REDD policies.[65]

Right to free, prior and informed consent

76. The right to free, prior and informed consent is closely related to indigenous peoples' self-determination and other human rights obligations, especially the right to participation. It has been endorsed in numerous findings by, for example, the Human Rights Council, inter-American human rights bodies,[66] the Special Rapporteur on the right to food,[66] the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Permanent Forum. Some domestic law has also evolved consistently with the obligation of free, prior and informed consent.[67]

77. The Special Rapporteur on indigenous peoples has commented on the meaning of free, prior and informed consent in the relevant articles of the Declaration (see A/HRC/12/34), and the Permanent Forum detailed elements of free, prior and informed consent at its fourth session.[68] Free, prior and informed consent includes the requirement under article 19 that States consult and cooperate with indigenous peoples through their own representative institutions in order to obtain their free, prior before adopting and implementing legislative or administrative measures that may affect them. Article 32, paragraph 2, imposes a specific free, prior and informed consent requirement to "the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". Other relevant articles include 10, 11, 15, 17, 18, 28-30, 36 and 38.

78. As has been noted, the inclusion of indigenous peoples in processes that have the potential to affect them is pragmatically beneficial. Moreover, experts on the subject have concluded that free, prior and informed consent processes "could possibly lead towards equitable solutions and evolutionary development which may lead, in their turn, to co-management and decision-making".[69]

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[64] E. Gerrard, "Impacts and Opportunities for Climate Change Indigenous Participation in Environmental Markets", *Native Title Research Units* (2008).

[65] L. Westholm and others, "Assessment of Existing Global Financial Initiatives and Monitoring Aspects of Carbon Sinks in Forest Ecosystems — the Issue of REDD", *Working Papers on Economics*, No. 373 (August 2009), and N. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge, Cambridge University Press, 2007).

[66] United Nations Special Rapporteur on the right to food, *Large-scale land acquisitions and leases: a set of core principles and measures to address the human rights challenge* (2009).

[67] For example, *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R. 511.

[68] See *Official Records of the Economic and Social Council, 2005, Supplement No. 43* (E/2005/43), paras. 69, 86 and 137.

[69] Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (E/C.19/2005/3), para 42.

79. The exact obligations under the free, prior and informed consent provisions of the Declaration differ according to the particular circumstances and issue in question, although indigenous peoples' consent must always be sought.[70] Particular obligations arise also where State decisions affecting indigenous peoples also have a broader impact, "because normal democratic and representative processes usually do not work adequately to address the concerns that are particular to indigenous peoples, who are typically marginalized in the political sphere".[71]

80. Drawing on indigenous peoples' experiences in the past, situations where the right to free, prior and informed consent is likely to arise include, inter alia and non-exhaustively, where the following interests could be impacted:[72]

- Indigenous peoples' lands, territories and resources, including their environment
- Indigenous peoples' rights under a treaty, agreement or other constructive arrangement
- Activities in indigenous peoples' areas, especially relating to extractive industries, development, tourism and dams
- Indigenous peoples' traditional knowledge.

81. Overall, initiatives to seek indigenous peoples' free, prior and informed consent must always be undertaken in good faith.[73] "Free" means that indigenous peoples are under no coercion, intimidation or manipulation.[74] "Prior" means that consent must be sought "sufficiently in advance of any authorization or commencement of activities and that respect be shown for time requirements of indigenous consultation/consensus processes".[75] Full information must be provided such as, in the climate change context, the specific ways in which mitigation and adaptation measures are likely to impact on indigenous peoples as well as the latest scientific information on climate change impacts. It should include accurate information about the nature, size and reversibility of any project, as well as its duration and an assessment of its necessity, and be presented in a manner appropriate for the indigenous peoples in question, bearing in mind that some indigenous peoples prefer oral forms of communication and may only speak their own indigenous language. Opportunities need to be provided for indigenous peoples to debate and deliberate on any proposal that might affect them. In liaising with indigenous peoples, States must be careful to engage with bodies that represent the indigenous people affected, and respect indigenous peoples' institutional and decision-making structures, as required by the Declaration.[75]

82. The Declaration also requires States in international settings, such as under the Framework Convention, to comply with the Declaration's provisions on free, prior and informed consent. Notably, indigenous peoples have objected to various proposed climate change measures unless they comply with the Declaration.

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[70] A/HRC/12/34, para. 47.
[71] Ibid., para. 42.
[72] E/C.19/2005/3, para. 45.
[73] Ibid., para. 47.
[74] Ibid., para. 46 (i).
[75] Ibid., para. 24.

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Report of the Inter-Agency Support Group on Indigenous Issues

Submitted by the United Nations Environment Programme and the United Nations Human Settlements Programme

Summary

The 2009 meeting of the Inter-Agency Support Group on Indigenous Issues was convened in Nairobi from 28 to 30 September 2009 and hosted by the United Nations Environment Programme and the United Nations Human Settlements Programme. The main themes included indigenous rights and challenges in Africa, such as the effects of climate change, and preparations for the 2010 section of the Permanent Forum on Indigenous Issues, including the development of a common Support Group reflection paper on development with culture and identity.

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I. Introduction

A. Meeting objectives

1. The objectives of the 2009 meeting of the United Nations Inter-Agency Support Group on Indigenous Issues were to:

(a) Consider relevant recommendations to the Group and to the Permanent Forum on Indigenous Issues, including with regard to the in-depth dialogues, and planned contributions to the Forum's 2010 session, such as the common reflection paper on development with culture and identity, to be drafted for the upcoming session;

(b) Provide insight into the situation of indigenous rights in the African region, through presentations by various indigenous peoples, including the Working Group on Indigenous Populations and Communities of the African Commission on Human and Peoples' Rights and the Kenya National Commission on Human Rights;

(c) Present case studies on indigenous peoples in the context of climate change, pastoralism and mobility.

2. The Resident Coordinator for Kenya addressed the meeting on ways to establish mechanisms for engagement and communication with indigenous peoples, so that their participation in United Nations processes such as the common country assessment and the United Nations Development Assistance Framework and in project formulation and implementation could be institutionalized, thereby ensuring transparency and inclusion.

B. Participation and attendance

3. The meeting was attended by 15 United Nations organizations and four members of the Permanent Forum on Indigenous Issues, namely Lars-Anders Baer, Margaret Lokawua, Hassan Id Balkassm and Liliane Muzangi Mbela. Twelve speakers and special guests were invited to participate in the first half of the three-day meeting.

C. Official opening

4. Opening statements were delivered by the Deputy Executive Director of the United Nations Environment Programme (UNEP); the Chief of the Housing Policy Section, United Nations Human Settlements Programme (UN-Habitat) Shelter Branch, on behalf of the Executive Director of UN-Habitat; Ms. Margaret Lokawua, on behalf of the members of the Permanent Forum on Indigenous Issues; the secretariat of the Permanent Forum on Indigenous Issues; and the United Nations Educational, Scientific and Cultural Organization (UNESCO), the outgoing Chair of the Inter-Agency Support Group.

5. The Deputy Executive Director of UNEP stressed the importance of the current meeting in terms of recognition of, and respect for, indigenous peoples' cultures. She outlined efforts by UNEP to promote indigenous peoples' issues and their active involvement in the UNEP Governing Council/Global Ministerial Environment Forum and to develop guidelines on how issues related to indigenous peoples could

be more effectively reflected in the Programme's policies and activities. She highlighted the importance of the United Nations Declaration on the Rights of Indigenous Peoples, which represented a major benchmark in the advancement of indigenous peoples' issues within the United Nations system.

6. The Deputy Executive Director drew attention to important upcoming high-level events in the areas of biodiversity, climate change and forests that presented a significant opportunity for indigenous peoples. The designation of 2010 as the International Year of Biodiversity was particularly significant for indigenous peoples, in view of their historical contribution to conserving biodiversity. The designation of 2011 as the International Year of Forests indicated how high the issue of forests had risen on the political agenda, a fact also reflected in the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (the UN-REDD Programme), where representatives of indigenous peoples served on the Policy Board.

7. In his statement, the Chief of the Housing Policy Section of UN-Habitat said there was an urgent need to impress upon Governments, local authorities and the private sector the importance of creating inclusive spaces in which all peoples had a sense of belonging. He pointed out that a third major trend, namely urbanization, should be added to the two major trends prevalent in the current world, namely globalization and the information revolution. The accelerated migration of indigenous peoples to urban areas owing, inter alia, to climate change, was creating problems in both developed and developing countries, with many forced to endure inadequate living conditions and disregard for their human rights.

8. He highlighted the need to provide access, for indigenous peoples, to culturally appropriate education, decent employment and water and sanitation, adding that indigenous women and youth were disproportionately affected. In conclusion, he stressed that the needs of indigenous peoples needed to be factored into urban design and planning and, in that context, reaffirmed the commitment of UN-Habitat to the inter-agency drive to improve the living conditions of indigenous peoples in urban areas worldwide.

9. The representative of UN-Habitat officially launched the *UN-Habitat Policy Guide to Housing for Indigenous Peoples in Cities*. The Policy Guide initiative, spearheaded by UN-Habitat, added an urban component to the more generic Guidelines on Indigenous Peoples' Issues, developed by the United Nations Development Group Task Team to mainstream and integrate indigenous issues in United Nations operational activities. The initiative aimed to provide much-needed guidance to policymakers, urban managers and practitioners on indigenous peoples' needs and specific challenges. It was expected to serve as a guide to local and national governments on possible measures, particularly policies, legislation and consultative, participatory mechanisms, for realizing indigenous peoples' rights in urban areas. The Policy Guide series covered the thematic areas most relevant to the improvement of urban indigenous peoples' living conditions, with a special focus on gender, youth and environmental issues. The series would help to positively influence Government policy, as it related to the living conditions of indigenous peoples in towns and cities.

10. The representative of UN-Habitat invited the Support Group to participate in the fifth session of the World Urban Forum, which would be held in Rio de Janeiro,

Brazil in March 2010. A special session on indigenous peoples' issues in urban areas would be organized.

11. In her statement, Ms. Lokawua noted that the Group's work was an important avenue for implementing the standards of the United Nations Declaration on the Rights of Indigenous Peoples and bringing indigenous peoples and United Nations organizations together in partnership. She called for greater awareness of indigenous peoples' issues among United Nations staff, senior management and governing bodies; the popularization of the United Nations Development Group Guidelines on Indigenous Peoples' Issues was key in that regard. The training of United Nations country teams was of particular importance and it was hoped that country teams in the African region would volunteer for such training. In closing, she emphasized the importance of considering the contribution of the diverse identities of the African peoples to Africa as a whole.

12. The secretariat of the Permanent Forum on Indigenous Issues welcomed the International Land Coalition as a member of the Support Group and reviewed highlights of the Forum's eighth session. A number of the Permanent Forum's recommendations were outlined, as well as studies that would be undertaken by the Permanent Forum's special rapporteurs on issues of particular importance. Inputs to that work were welcomed. It was also noted that capacity-building, including training for specific country teams, was an important feature of the action plan for the United Nations Development Group Guidelines on Indigenous Peoples' Issues.

13. The representative of UNESCO noted that the theme of indigenous peoples' issues was also at the heart of it mandate, specifically with respect to the promotion of development with culture and identity. Some of the events of the preceding year were outlined, as they had laid the groundwork for the Support Group's reflection paper on indigenous peoples' issues in the context of globalization and climate change. The representative was pleased that the current meeting focused on the rights of indigenous peoples in Africa and welcomed it as a capacity-building opportunity.

D. Agenda and organization of work

14. After the official opening, a panel discussion was held on the situation of indigenous peoples' rights in Africa, during which presenters introduced the challenges facing African indigenous peoples as well as the available tools and the research being carried out to address their situation in a more effective and informed manner. This was followed by a discussion with the Resident Coordinator for Kenya on the issues of indigenous peoples in that country and by presentations of field and project experiences involving work with indigenous peoples, including options for future cooperation among the Permanent Forum on Indigenous Issues, the Support Group and country teams on indigenous peoples' issues. The second day was devoted to the special case of climate change and population movements, the UN-REDD Programme and black carbon assessments. A special report on thematic presentations given at the Support Group meeting is included in the annex to conference room paper E/C.19/2010/CRP.2.

II. Feedback on the eighth session of the Forum and preparations for the ninth session

15. The Permanent Forum has incorporated an in-depth dialogue with six United Nations organizations into its sessions. The following agencies took part in the dialogue at the eighth session: the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Fund for Agricultural Development (IFAD), the United Nations Development Programme (UNDP), the Food and Agriculture Organization of the United Nations (FAO), the Department of Economic and Social Affairs of the Secretariat and the United Nations Population Fund (UNFPA).

16. The purpose of the in-depth dialogue was to enhance the understanding of Permanent Forum members, indigenous peoples and Governments of the challenges and opportunities faced by United Nations organizations in discharging their mandates, especially those related to indigenous peoples. A number of organizations that participated in the dialogue had sent high-level representatives to the eighth session, which demonstrated their commitment to the Permanent Forum. The dialogue between the Permanent Forum and the representatives was positive.

17. During the ensuing discussion, a number of representatives said that the first in-depth dialogue had been a useful exercise. It had resulted in a dynamic meeting for which the organizations had prepared well and had ensured greater engagement on their part in the future. Feedback from indigenous peoples' organizations indicated that, for them, the dialogue had served as a form of capacity-building, because they were made aware of the mandates and functions of the organizations.

18. The New York-based organizations had sent significant delegations of senior managers, while others had sent focal points and directors and had invited the participation of indigenous peoples. Organizations attending future in-depth dialogue sessions should be clear about what they were seeking to achieve and the messages to be conveyed to indigenous peoples. The attendance of directors and focal points facilitated spontaneous exchanges of information, while the attendance of senior managers ensured their engagement and raised the profile within their respective organizations regarding indigenous peoples' issues.

19. In order to enhance future dialogues, it was considered that might be useful to prioritize indigenous peoples' interventions. This would also ensure greater understanding on the part of United Nations organizations, particularly with respect to issues that are of special importance to them.

20. To limit the number of documents submitted by organizations, the secretariat of the Permanent Forum produced a summary compilation of the reports by the organizations that were not involved in the in-depth dialogue and posted the full reports on its website.

21. It was suggested that the six organizations participating in the ninth session should consider how they might work on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, with special focus on article 41, and make a presentation on that topic. It was stressed that, in order to improve the situation of indigenous peoples on the ground, it was important to present plans or programmes for the following years and improve dialogue at the national level among indigenous peoples, Governments and United Nations country teams.

22. Other suggestions were made regarding how to optimize the time available for in-depth dialogues, including by focusing on fewer and more specific issues and by ensuring that all participants were well briefed. It was suggested that the Permanent Forum members should base some of their observations on the organizations' reports, which were extremely useful and informative. It was acknowledged that there were still shortcomings in the in-depth dialogue system; however, those would be remedied over time. Another view was that the concept of the dialogue should be rethought as a two-way process in which questions and answers were exchanged between the two sides. Participants stressed the importance of ensuring that indigenous peoples' representatives fully understood the processes involved, so that they could effectively use the system to air their concerns.

23. It was mentioned that States reported to the Committee on the Elimination of Discrimination against Women on a regular basis; a similar system could be introduced in the Permanent Forum sessions, especially with respect to the in-depth dialogues. It was considered useful to have Government reports on their engagement with indigenous peoples, when designing projects at the country level. It was suggested that countries could participate in the in-depth dialogue and that the ninth session could include representatives of three United Nations organizations and three States.

24. It was crucial that, as part of the dialogue and to avoid frustration, an explanation should be provided of how programmes were constructed by the United Nations at the country level and what the process involved. This would include an explanation of the common assessment through the United Nations development assistance frameworks, dialogue with Governments and the submission of programmes to executive boards for implementation approval. Countries could be chosen to participate in the dialogue on the basis of their United Nations Development Assistance Framework status.

25. The choice of countries for the in-depth dialogue would depend on certain variables, such as Governments' recognition of and relationships with indigenous peoples. It was important to be open to various possibilities and to make a final decision on the basis of consultation with partners. The importance of organizations reporting on the implementation of the Permanent Forum's recommendations was also stressed.

26. There were a number of views regarding the Permanent Forum's recommendations, including concerns that their time frame was unrealistically short and that a high level of technical support was necessary to ensure effective implementation. The most problematic recommendations were those linked to the mechanisms of the conventions; a system of communications should be set up to ensure that the drafting of recommendations was shared and frequent contact should be maintained among Support Group members, to ensure that any problems in the draft recommendations were promptly resolved. Noting that the various country programmes differed widely in character, it was suggested that Permanent Forum members could be invited to observe those being implemented, to give them first-hand experience of the situation on the ground.

27. Regarding recommendations that were framed in such a way that organizations found them extremely difficult to implement, the organizations might benefit from spending more time with the Permanent Forum and might even provide advice on

the drafting of the recommendations, to ensure they were practicable and fell within individual mandates.

III. Discussion of the tasks and responsibilities of the Inter-Agency Support Group

Follow-up on the implementation of articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples and on the Forum's special mission to Paraguay and the Plurinational State of Bolivia in 2009

28. The secretariat of the Permanent Forum gave an overview of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, which was the shared responsibility of all United Nations organizations. A range of activities had been carried out over the preceding two years, including the translation of the Declaration and the promotion of awareness among United Nations staff. The promotion of the Declaration was a fundamental part of the Permanent Forum's work; making it a living document and ensuring its integration in all areas was a stated commitment. Having been specifically mentioned in article 42 of the Declaration as one of the bodies responsible for its promotion and full application, the Permanent Forum had made several recommendations to that end. For example, it had recommended that States should be invited to provide the Forum with substantive information on the implementation of the Declaration and an assessment of its effectiveness at the national and local levels; provide adequate information on the Declaration in their core reports to the human rights treaty bodies; and consult with indigenous peoples with due regard to free, prior and informed consent. It had also made recommendations on securing adequate financial resources and on promoting the integration of the Declaration into policies and strategies. During 2008, the Permanent Forum sought to follow up on the Declaration in other ways, such as working with other organizations to roll out a training module for country teams, developing a training module for indigenous peoples and Government officials through IFAD funding; coordinating and ensuring complementarity of efforts with other United Nations mandates focused specifically on indigenous peoples' issues; making contributions to research; and acting as an advisory group to the Secretary-General in connection with the Trust Fund for the Second Decade.

29. Another highlight was the Permanent Forum's mission to Paraguay and the Plurinational State of Bolivia in April 2009, under article 42 of the Declaration, for the purpose of investigating forced labour among indigenous peoples. It had been a landmark visit, since it was the first time that the Permanent Forum had been invited by Governments to carry out such a mission, with the support of the other organizations concerned. The challenge was to follow up on the recommendations made.

30. During the ensuing discussion, a number of representatives welcomed the above-mentioned mission as an opportunity for the Support Group members to join forces and devise a strategy or workplan; this was needed because the tasks listed in the recommendations were too numerous for one organization. A number of representatives drew attention to work by their organizations in those countries. One member emphasized that forced labour was a major issue for indigenous peoples

and said her organization was scaling up its specialized staff in Peru in response to forced labour in the logging sector.

31. The secretariat of the Permanent Forum welcomed the suggestion of working together in those countries on an inter-agency basis. The Forum had offered training to both country teams and had requested both Governments to report back to the Forum at its ninth session. UNDP in Paraguay had planned to offer workshops on the mission report and to give presentations to the Government and indigenous peoples' organizations, and the International Labour Organization (ILO) in the Plurinational State of Bolivia was working on forming a committee for the implementation of the report.

Follow-up on the review and questionnaire relating to the Second International Decade of the World's Indigenous People

32. The secretariat of the Permanent Forum presented the background to the Second International Decade of the World's Indigenous People declared by the General Assembly in December 2004, which had begun on 1 January 2005. It outlined the five main objectives of the Decade, which included promoting the full and effective participation of indigenous peoples in decisions affecting their lifestyles, territories and cultural integrity; promoting the principle of free, prior and informed consent; and adopting targeted policies, programmes and budgets for the development of indigenous peoples, with particular emphasis on women, children and young people. In 2008, the General Assembly had called for a midterm assessment report to evaluate the achievements of the Second Decade by means of a voluntary questionnaire. The final report with conclusions and recommendations would be presented to the General Assembly in 2010.

33. While some Support Group members had found the questionnaire useful and thought-provoking, it had also been time-consuming. As a generic questionnaire, it had been quite useful, but it had not taken into account the work of specialized agencies and treaty implementation bodies. Organizations could be involved in the design of a similar exercise in the future.

34. Some Support Group members said that much of the in-depth dialogues and the reporting to the Permanent Forum focused on work carried out on indicators and formed part of the monitoring of the United Nations Declaration on the Rights of Indigenous Peoples. Given that resources for monitoring were limited, the monitoring process could be strengthened.

Follow-up on the community of practice on indigenous peoples' issues

35. UNDP elaborated on the proposal to develop a community of practice on indigenous peoples' issues, explaining that it would serve as a tool for communication between practitioners. It would not involve significant resources and would enable country offices to tap into the knowledge of United Nations colleagues on subjects such as human rights, democratic governance and indigenous peoples.

36. The Support Group expressed support for the initiative, but some members expressed reservations with regard to the time it might require. It was pointed out

that UNDP was already involved in that kind of networking. A similar communications platform had been established in Canada and in the Plurinational State of Bolivia by one agency (FAO); the existing platforms could perhaps be used for this purpose.

IV. Preparations for 2010

Presentation of the outline of the reflection paper on development with culture and identity

37. UNESCO presented the outline for the reflection paper on development with culture and identity. Recalling that 2010 had been declared the International Year of Biodiversity and the International Year for the Rapprochement of Cultures, concepts that were key to indigenous peoples' perspective on development, she pointed out that the paper had a dual objective: to contribute to new thinking on the theme of development with culture and identity and to inform thinking in the United Nations system on the concept and its application in the individual and joint work of the various organizations. In conclusion, the planning process of the paper was outlined and its proposed structure reviewed, with the emphasis that contributions would have to be concise.

Proposal for the 2010 Youth Forum and paper on young people's views on development with culture and identity

38. UNICEF described a joint UNFPA, UNICEF and UNDP initiative that was intended to empower young indigenous people and strengthen their participation in the Permanent Forum sessions. Young indigenous people had been extremely active in previous sessions and their participation was vital to ensuring the sustainability of indigenous peoples' gains. It was hoped that there would be a significant number of young indigenous peoples at the forthcoming Permanent Forum session on development with culture and identity. There would be a number of planned UNICEF activities, including providing support to young indigenous people to write their own report on the theme and organizing a preparatory training meeting for young indigenous participants, to enable them to exchange views, build leadership skills, discuss leadership at the global and community levels, familiarize themselves with United Nations human rights instruments and mechanisms, and the work of United Nations organizations, and enhance their participation at the Permanent Forum session.

39. To maintain the initiative's integrity it was important that young indigenous people should be given the opportunity to personally express their views, in a forum where they were respected.

40. Regarding linkages with the joint OHCHR, UNESCO and UNDP Indigenous Fellowship Programme, UNICEF noted that the possibility was being considered; however, there might be a discrepancy between the Programme and the initiative with respect to age ranges. It was stressed that UNICEF was continuing to strengthen its contacts with young indigenous people who attended the Permanent Forum.

41. Suggestions for possible participants in the initiative included the youngest indigenous woman minister, who was in charge of development and came from north-eastern India and two young indigenous girls who had recently been elected to the UNEP Tunza Youth Advisory Council. UNICEF welcomed the suggestions and invited representatives to provide examples of other young leaders who might make presentations to the young indigenous participants.

International Year of Biodiversity

42. The secretariat of the Convention on Biological Diversity gave a detailed overview of events planned for the International Year of Biodiversity, 2010, specifically the public awareness campaign, which aimed to increase the attention paid to biodiversity loss as an important aspect of climate change, encourage the public's discovery of nature and create a sense of optimism that it was not too late to act. A number of key events involving the Convention on Biological Diversity were mentioned, such as the Green Wave tree-planting programme in schools worldwide, and numerous innovative products developed by the secretariat to raise awareness of indigenous peoples and traditional knowledge, including community-based short films, posters in indigenous languages, websites and newsletters with particular appeal to young people.

Initiatives by the Food and Agriculture Organization of the United Nations

43. The representative of FAO gave a brief description of three of the agency's initiatives. The Committee on World Food Security had been reformed and, in future, would offer participants from United Nations organizations and bodies with a mandate related to food security and nutrition and representatives of indigenous peoples, the opportunity of meeting periodically to discuss food security issues and coordinate global efforts to eliminate hunger and ensure food security for all. Indigenous peoples were urged to check the agency's website regularly and apply for membership on the Committee, if interested. Attention was drawn to the World Summit on Food Security, held in Rome from 16 to 18 November 2009. A parallel civil society forum had been held, at which 60 women, 60 indigenous persons, 60 farmers' or rural organizations and 60 young people had been invited to discuss the Declaration and provide inputs to the Summit.

Post-2010 biodiversity targets

44. The UNEP Division of Environmental Law and Conventions drew attention to three of its activities. The first was the development of post-2010 biodiversity targets aimed at reducing biodiversity loss; this was directly linked to indigenous peoples through their role in the use and conservation of biodiversity. The Programme had hosted an informal meeting of experts on the development of the targets in February 2009, followed by a second meeting in October. The second activity concerned biocultural protocols, which were described as documents that recorded a community's biocultural values and asserted its rights to manage, benefit from, protect and use its traditional knowledge, customary laws and values. The

Division was working on developing a biocultural protocols book and a database on the UNEP website, which would include case studies, information tools and records of traditional knowledge; both the book and website had been launched in Montreal in early November 2009. The third activity was a study on multilateral environmental agreements, the law, traditional knowledge and sustainability, which examined the role of multilateral environmental agreements and the law in protecting traditional knowledge and ensuring sustainability. The study would provide recommendations for the reform of legal systems at the international and domestic levels, to enhance the protection of traditional knowledge.

2010 Support Group meeting: discussions on indigenous peoples' health

45. The Support Group welcomed the proposal by the World Health Organization (WHO) to host its annual meeting in Geneva in September 2010 and was pleased that the organization was ready to re-engage, after an absence of several years. WHO was regarded as a key organization and should be invited to take part in the Forum's discussions on the draft agenda for the annual meeting. For its part, the Group's task was to support the preparation of the meeting by the host agency. Since the Group was knowledgeable about indigenous peoples' health issues, particularly women's health, it could be useful to WHO in preparing the meeting.

46. It was proposed that the agenda for the 2010 meeting should not be devoted entirely to indigenous peoples' health, but should include topics relevant to all the organizations. There was also a request to include maternal and infant mortality.

V. Preparations for the Forum's ninth session, in 2010

47. The Support Group took part in discussions on the proposal for a community of practice; the involvement of country-level representatives; and the issue of indicators and monitoring the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. There were questions as to whether the Support Group's terms of reference should be expanded to include country-based and organization focal point involvement or whether the current policy of inviting country representatives to Permanent Forum meetings on an ad hoc basis should continue. It was pointed out that inviting country-level staff would have cost implications. Some organizations had found it extremely valuable to invite regional representatives to meetings; however, such visits could be linked to specific themes and side events.

48. There was a suggestion that the UNDP proposal to establish a community of practice could be extended to include country-based focal points. Participants welcomed the initiative for a community of practice and pointed out that it would not affect the Support Group's dynamics, but would serve as an important way of sharing resources and information.

49. It was proposed that the Permanent Forum secretariat should provide an update on the Forum's 13 current recommendations to the Group. With respect to the new recommendation calling for the establishment of a technical workshop on indicators for the Declaration, it was proposed that a back-to-back meeting should be held with

the Support Group's 2010 meeting, to include representatives from indigenous peoples' groups.

50. Some Group members pointed out that experts on indicators were not always familiar with issues affecting indigenous peoples. Others stated that it was time to look beyond indicators to the area of monitoring and implementation.

51. It was proposed that attempts should be made to re-engage organizations by requesting them to nominate official focal points.

VI. Challenges within United Nations agencies and programmes in developing and implementing guidelines, strategies or policies pertaining to indigenous peoples

World Bank operational policy on indigenous peoples: challenges to implementation in sub-Saharan Africa

52. The World Bank provided the context for its policy on indigenous peoples, which had been in place for some time but had been threatened by the global economic crisis. The Bank's guiding principles in engaging with those most affected were to put people at the centre of development efforts; to do no harm and to provide a way forward; and to ensure maximum accountability. Safeguards were built into every investment, with particular regard for land issues and indigenous peoples. Discussions with indigenous peoples worldwide had revealed that certain issues were particularly challenging, such as the application of the principle of informed consent, as set out in the United Nations Declaration on the Rights of Indigenous Peoples and land tenure issues.

53. The World Bank also focused on the challenges of implementing operational policy in sub-Saharan Africa, given that Africa lagged behind other regions. The actual identification of indigenous peoples was a technical issue; other key factors included collective attachment to land, culture and language. Many peoples had been displaced by war or Government policies but remained covered by the Bank's policy; the only exception was indigenous peoples who had migrated to urban areas for economic reasons. Mandatory requirements for World Bank investment included ratification of ILO Convention No. 169; culturally appropriate benefit to indigenous peoples; recognition of land rights; equitable benefit sharing; and avoidance of physical relocation. The principle of informed consent was applied to every project and no financing was provided without broad community support. Many countries in Africa were successfully implementing the Bank's policy but the large number of projects in the pipeline in sub-Saharan Africa posed a major challenge. Some of the mechanisms used to tackle the challenges were intensive bilateral dialogue with countries, intensive consultations with specific indigenous peoples' organizations and the use of the Bank's inspection panel.

54. During the ensuing discussion, it was pointed out that, in some countries, acceptance of the World Bank operational plan for indigenous peoples was used as a measure in applying certain ILO policies. Some participants expressed surprise that the Bank did not cover indigenous peoples who had migrated to towns since, in most cases, they had been forced to look for alternative employment.

55. The World Bank's senior management was considering aligning the Bank's policy of broad community support with the United Nations Declaration on the Rights of Indigenous Peoples, in particular, the provisions on informed consent. The two concepts did not differ in substance, although the latter was perhaps a more legal and technical requirement. In all project assessments, the Bank looked at a broad range of stakeholders and ensured that there was enough support before projects could proceed

56. It was pointed out that there had been a shift in the policy dialogue, as most countries were requesting social impact assessments in the context of the global economic crisis and were trying to tackle marginalization and the impacts on excluded groups, including indigenous peoples. Many indigenous peoples in urban areas were covered, for example, if they were forcibly moved by Governments; individual economic migrants were not covered, but they fell under the poverty assessment policy. The Bank also recognized the need for clear rules of engagement on land issues in the light of the massive appropriations currently taking place; land issues remained a serious challenge for the Bank and were currently under discussion.

Work by UNICEF on indigenous issues

57. UNICEF gave a presentation on a study published in April 2009 that took stock of the current work on indigenous issues and included a desk review, a good practice analysis, a country office survey and project ethnographies in Peru and the Congo. The study suggested that field experience and interaction with the Permanent Forum and other stakeholders had led UNICEF to develop a comprehensive approach to promoting and asserting the rights of indigenous children and women. That approach combined UNICEF's rights-based approach with interculturalism and was consistent with the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the United Nations Declaration on the Rights of Indigenous Peoples. The survey had been circulated to 59 country offices but, with the exception of Latin America, the response rate had been low. The survey had covered most UNICEF activities, giving examples of good practices, but had also revealed the constraints faced by UNICEF staff, such as limited funds and weak coordination with other United Nations agencies. Attention was drawn to the two case studies carried out in the Republic of the Congo and Peru. That comparative study showed that UNICEF needed to systematize its approach to indigenous issues, adapting it to different regional, national and local contexts; refine its understanding of indigenous cultures and societies; and strengthen collaborative links and synergies on indigenous issues with other United Nations organizations.

58. Questions were raised regarding the low figure of 2 per cent shown for the HIV/AIDS sector in the good practices table. UNICEF pointed out that most of its HIV/AIDS funding went to countries where it had a strong presence and not necessarily to large indigenous populations. In some countries, communities as a whole benefited from UNICEF work, including indigenous peoples. Furthermore, the survey reflected the responses provided by the country offices themselves and did not necessarily indicate whether those being helped were indigenous peoples.

59. Regarding the suggestion that local indigenous peoples in individual countries be given grants to enable them to become more involved in UNICEF programmes, UNICEF explained that its policy was to negotiate directly with Governments.

IFAD policy on engagement with indigenous peoples

60. The representative of IFAD gave a presentation on her organization's policy on engagement with indigenous peoples and expressed its gratitude to the Support Group members, the secretariat and members of the Permanent Forum and the indigenous peoples for their inputs. The IFAD policy aimed to enhance the effectiveness of the organization's development projects and activities with indigenous peoples and to set standards and provide guidance and tools. It drew upon experience on the ground, which had shown that the indigenous peoples' distinctiveness was their asset and their economic potential and should be built upon. Attention was drawn to policy instruments, such as the Indigenous Peoples' Assistance Facility and to the indigenous peoples' forum, which was currently under development. She described the process of elaborating the policy, which had been approved by the organization's Executive Board on 14 September 2009. The remaining challenge was to ensure thorough implementation. Training the organization's staff, strengthening cooperation with partners at the country level and operationalizing the principle of free, prior and informed consent were all key.

61. The Support Group congratulated IFAD on the adoption of its policy on engagement with indigenous peoples and asked whether IFAD sought to encourage support for its processes through legal instruments, such as the Convention for the Safeguarding of the Intangible Cultural Heritage. It was suggested that the indigenous peoples' forum currently under development might provide a good opportunity for engagement with partners. Stressing its importance in the implementation and evaluation of programmes, the Support Group asked IFAD to provide a practical example of where disaggregated data collection was possible.

62. The organization's original intention was to include information on the conventions ratified by each country and details on national policies in its technical notes. The specific circumstances of a country were key in the provision of technical advice on project design. While it was impossible to gather disaggregated data everywhere, it was easier at the project level than at the national level. Country strategic programmes, which were Government-owned, presented particular problems, as the organization could not impose the collection of disaggregated data. Official data were available in some countries, such as India, while, in others, specific studies and research were required to obtain the data. The targeting of IFAD projects was geographical and based on poverty data.

Policy guide to housing for indigenous peoples in cities

63. UN-Habitat gave a presentation on its publication *Housing Indigenous Peoples in Cities: policy guide to housing for indigenous peoples in cities*, which had been developed over a two-year period, with the generous support of the Government of Canada. The policy guide included input from the International Expert Group Meeting on Urban Indigenous Peoples and Migration held in Chile from 27 to 29 March 2007 and feedback from the seventh session of the Forum. Other organizations had

been invited to collaborate with the United Nations Housing Rights Programme on specific challenges faced by indigenous peoples in urban areas, in accordance with their respective mandates. The initiative had been presented at the seventh session of the Permanent Forum and at the fourth session of the World Urban Forum in Nanjing, China, and would be promoted at the fifth session of the World Urban Forum in Rio de Janeiro, Brazil, in March 2010. UN-Habitat would also launch a review of policies on indigenous peoples and migration to the cities at the fifth session, in conjunction with OHCHR. Policy guidelines for the organization's engagement with indigenous peoples were being elaborated for submission to UN-Habitat Member States, for their consideration.

Guidelines of the United Nations Environment Programme on indigenous peoples

64. The representative of UNEP informed the Support Group that UNEP had been working on drafting guidelines for engagement with indigenous peoples, as recommended by the Permanent Forum in 2006. A bottom-up approach had been adopted, with initial consultations with indigenous peoples' representatives. Comments from the representatives and UNEP colleagues had been considered and the draft was being revisited by UNEP senior management, to ensure that it was in line with the new programme of work and medium-term strategy. The document would soon be adopted by the senior management, to ensure a more systematic approach to activities related to indigenous peoples.

VII. Closure of the meeting

65. The Support Group meeting concluded with an impressive and inspiring report on the situation of African indigenous peoples; both indigenous peoples' representatives themselves and relevant African institutions had been invited to report on their work and their experiences.

66. The presence of the Resident Coordinator for Kenya at the Support Group meeting was highly appreciated and paved the way for future collaboration and the establishment of a mechanism and platform on indigenous peoples issues in Kenya for the country team.

67. The Support Group expressed sincere gratitude to UN-Habitat and UNEP for hosting the 2009 event and thanked the staff of UN-Habitat and UNEP for their warm welcome and efficiency.

VIII. Recommendations

A. Introduction

68. The Support Group thanked UNEP and UN-Habitat for having hosted the 2009 annual meeting.

69. It also thanked the Kenya National Commission on Human Rights, the African Commission on Human and Peoples' Rights, indigenous peoples' representatives

and non-governmental organizations and the country team in Kenya, who made presentations on the first day of the meeting and provided insight into the indigenous peoples' situation in Africa.

70. The Support Group congratulated IFAD on the recent approval of its new policy on engagement with indigenous peoples and reiterated its support for the policy's implementation. It further congratulated IFAD on having set a positive example for other intergovernmental organizations and international financial institutions.

B. General recommendations regarding the Support Group's work

71. A country-level task force on indigenous peoples' issues in Kenya, coordinated and supported by the country team, should be established to follow up the recommendations of the present report and liaise with the Group and the secretariat of the Permanent Forum on the possibility of organizing a training session on indigenous peoples' issues for the country team in Kenya.

72. The Permanent Forum secretariat needed to renew its efforts to strengthen participation in the Support Group, including the engagement of organizations by encouraging them to nominate official focal points for indigenous peoples' issues.

73. The Support Group welcomes the offer by WHO to engage with the Group and host its next annual meeting in 2010.

74. WHO is invited to cooperate closely with the Permanent Forum secretariat and the Support Group on preparing a draft agenda for the next annual meeting, which will be considered at the Support Group's meeting during the ninth session of the Permanent Forum.

75. A communication platform should be established to consider more effective methods of communication, information-sharing and coordination among the members of the Support Group. The platform could be extended, for regular communication and exchange of views, to the members of the Permanent Forum, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Expert Mechanism on the Rights of Indigenous Peoples and country offices, among others.

76. In addition, modalities should be explored for establishing a mechanism or mechanisms for engagement and consultation with indigenous peoples at the national level, so that their participation in United Nations processes such as the formulation and implementation of common country assessments and United Nations Development Assistance Framework projects is guaranteed, while ensuring the necessary transparency and inclusion, in the light of their right to free, prior informed consent.

77. The recommendations addressed to the Support Group by the Permanent Forum should be followed up by the Group, in collaboration with the Permanent Forum secretariat.

78. Members of the Permanent Forum could further refine their portfolio, areas of expertise and focal point system, in order to enhance cooperation with organizations.

C. Recommendations on communication between the Inter-Agency Support Group and the United Nations Permanent Forum on Indigenous Issues and on the in-depth dialogues

79. In the light of the positive experience gained from the in-depth dialogues at the Permanent Forum's annual session in 2009, this exercise should continue. The number of organizations involved in such dialogues could be reduced to two or three relevant to the session's current theme, to avoid overloading and provide ample time for each dialogue, especially in view of enhancing the direct interaction of the organizations with indigenous peoples' representatives.

80. The in-depth dialogue could also be extended to two or three countries per session.

81. The Permanent Forum secretariat is invited to provide clearer guidance to the Support Group regarding how to prepare and structure the dialogue.

82. The Group proposes to include the recommendations to the United Nations organizations participating in the in-depth dialogue in the main report of the Forum session.

83. The opportunity to contribute to the mid-decade review is welcomed. The Permanent Forum secretariat is encouraged to design the end-of-decade review format well in advance, in an effort to harness synergies between the numerous reporting requirements placed on organizations and the anticipated monitoring and evaluation exercise to assess the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

84. Members of United Nations country teams or representatives from one or two countries involved in a United Nations Development Assistance Framework exercise could also be asked to participate in the Permanent Forum's in-depth dialogues. The country teams could be invited to explain the programming process, themes, priorities and other matters and to answer questions. Alternatively, Permanent Forum members could be invited to visit the country teams, in particular those involved in development assistance framework exercises, since the latter provide a good opportunity to consider new programming ideas.

D. Further recommendations

85. The Support Group recommends that its members collaborate with the working group of the African Commission on Human and Peoples' Rights at its November 2009 session, to further identify and explore strategies to promote the implementation of indigenous peoples' rights in the African region.

86. As a follow-up to the Permanent Forum's missions to Paraguay and the Plurinational State of Bolivia to assess the situation of the Guarani people, a plan of action on how to implement the recommendations in the mission reports should be developed. The plan of action would specify the contributions of the various United Nations organizations, as submitted by them. IFAD and FAO could compile the plan of action, based on inputs received, and submit it to the Permanent Forum secretariat prior to the Permanent Forum's ninth session.

87. Entry points, potential synergies and opportunities to mainstream indigenous peoples' issues in country programming should be identified. For instance, activities on indigenous peoples' issues could be undertaken within the framework of existing initiatives and projects, such as the Civil Society Democratic Governance Facility implemented by UNDP, the Global Environment Facility Small Grant Programme and others (e.g., conflict prevention).

88. The Permanent Forum secretariat is encouraged to disseminate information on the 2010 international years, namely, the International Year of Biodiversity and the International Year for the Rapprochement of Cultures, in order to promote the involvement of indigenous peoples' organizations in those activities.

United Nations E/C.19/2010/9

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Permanent Forum on Indigenous Issues
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Item 7 of the provisional agenda*
Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Study on indigenous peoples and corporations

Note by the secretariat

Summary

During its seventh session, the United Nations Permanent Forum on Indigenous Issues appointed three of its members as Special Rapporteurs to conduct a study on indigenous peoples and corporations to examine existing mechanisms and policies relating to corporations and indigenous peoples, and review good practices. The mandate of the Special Rapporteurs was extended during the eighth session, and the Permanent Forum asked them to submit a written report to it at its ninth session, in 2010. The secretariat hereby transmits a note by the Special Rapporteurs appointed to conduct a study on indigenous peoples and corporations.

* E/C.19/2010/1.

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1. Although there have been substantial developments in the promotion and protection of the human rights of indigenous peoples in recent years, indigenous peoples around the world continue to suffer violations of their human rights and fundamental freedoms on a regular basis. This is especially the case in the context of extractive industries, such as those involving mineral, oil or gas extraction, which disproportionately impact indigenous peoples. Corporations involved in extractive industries are today often involved in abuses of the rights of indigenous peoples to their lands, territories and resources, their civil and political rights and their right to development. Such violations occur in all regions of the world and, more often than not, are permitted and tolerated by States.

2. In addressing the United Nations Permanent Forum on Indigenous Issues, indigenous peoples have consistently stressed the crucial need to address human rights issues related to extractive industries. In response, during its seventh session, the Permanent Forum appointed three of its members, Elisa Canqui Mollo, Carlos Mamani Condori and Pavel Sulyandziga, as Special Rapporteurs to conduct a study on indigenous peoples and corporations. The study is to examine existing mechanisms and policies relating to corporations and indigenous peoples, and will review good practices. The mandate of the Special Rapporteurs was extended during the eighth session, and the Permanent Forum asked them to submit a written report to it at its ninth session, in 2010.

3. The Special Rapporteurs have agreed upon an outline for the study and have each provided separate papers as conference room papers. For the eighth session of the Forum, Ms. Canqui Mollo submitted a paper on the impact of corporations on the lives and territories of indigenous peoples,[1] and Mr. Mamani Condori submitted a paper on indigenous peoples and companies: colonial rights and relations.[2] For the ninth session, Mr. Sulyandziga submitted a paper on indigenous peoples and industrial companies: problems, opportunities and prospects.[3]

4. In addition to appointing its Special Rapporteurs, the Permanent Forum, during its seventh session, adopted a recommendation concerning the holding of an expert workshop on extractive industries. The international expert group workshop was organized by Tebtebba Foundation, in cooperation with the secretariat of the Permanent Forum, and was held from 27 to 29 March 2009 in Manila. The report of the workshop[4] was submitted as a conference room paper to the eighth session of the Permanent Forum.

5. The Permanent Forum also convened an international workshop on Perspectives of relationships between indigenous peoples and industrial companies in Salekhard, Russian Federation, in 2007. The workshop was co-organized by the Administration of the Yamal-Nenets Autonomous Okrug, the Association of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation and the secretariat of the Permanent Forum, with support from the Public Chamber of the Russian Federation (see E/C.19/2008/5/Add.6).

6. Given the complexity and magnitude of the study, the Special Rapporteurs have agreed to submit their individual contributions to the Permanent Forum

[1] E/C.19/2009/CRP.11 (Spanish only), available at www.un.org/esa/socdev/unpfii/documents.
[2] E/C.19/2009/CRP.14 (Spanish only), ibid.
[3] E/C.19/2010/CRP.1 (Russian only), ibid.
[4] E/C.19/2009/CRP.8, ibid.

together with a draft outline of the study (see annex I). The Special Rapporteurs have also submitted a select bibliography of key United Nations documents related to the private sector and the rights of indigenous peoples (see annex II). Finally, the Special Rapporteurs recommend that the Permanent Forum consider appointing a Special Rapporteur at its tenth session, in 2011, to continue the mandate of this study.

Annex I

Draft outline of the study on indigenous peoples and corporations

I. Introduction

A. Indigenous peoples' relationships with the land (environment, water, forests, mountains);

B. Overview of the relationship between corporations, States and indigenous peoples. General impacts of the activities of corporations on indigenous peoples.

II. Private-sector industries operating in indigenous lands and territories; descriptions/examples of specific conflicts in each of these areas:

A. Extractive industries (mining, oil, logging, etc.);

B. Agriculture/ethanol industries;

C. Pharmaceutical and cosmetic industries;

D. Hydroelectric and other mega-projects.

III. International law and the policies of international institutions

A. International law, including the United Nations Declaration on the Rights of Indigenous Peoples, and the duty to consult and free, prior and informed consent:

Relevant decisions of United Nations treaty bodies, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and other international bodies. Relevant work of the Special Rapporteur, including his report on mega-projects and on his visit to Panama;

B. International institutions

Policies of the international financial institutions (World Bank, Inter-American Development Bank, Asian Development Bank and others).

IV. Domestic law — examples of legislation implementing relevant international law.

V. Indigenous peoples' approaches, organization and strategies

In spite of developments in international law, there has been little change in the behaviour of States and corporations with respect to their operations within indigenous territories. How are indigenous peoples organizing around this issue, and what strategies are being used?

VI. Promising practices (An analysis of documented cases will be presented. Those cases should provide guidelines for policymaking and programme and project planning and execution. The purpose of this section will be to present and promote creative, successful and sustainable solutions to indigenous peoples' relationships with corporations.)

A. Ideally, two cases per region;

B. To be included in the report, the case should have involved a consultation process; included practices on the environment and social compensation; and had beneficial results for indigenous peoples.

VII. Conclusions and recommendations.

Annex II

Select bibliography of key United Nations documents related to the private sector and the rights of indigenous peoples

1. United Nations Permanent Forum on Indigenous Issues

Key reports*

- "Indigenous peoples and industrial companies: problems, opportunities and prospects" (E/C.19/2010/CRP.1), available in Russian only
- "The impact of corporations on the lives and territories of indigenous peoples" (E/C.19/2009/CRP.11), available in Spanish only
- "Indigenous peoples and private companies: colonial rights and relations" (E/C.19/2009/CRP.14), available in Spanish only
- Report of the international expert group meeting on extractive industries, indigenous peoples' rights and corporate social responsibility (E/C.19/2009/CRP.8), available in English only
- Information received from Governments: Russian Federation: report on the international workshop on perspectives of relationships between indigenous peoples and industrial companies, held in Salekhard, Yamal-Nenets Autonomous Okrug, Russian Federation (E/C.19/2008/5/Add.6)

2. Office of the United Nations High Commissioner for Human Rights

(a) Key reports

- Report of the Office of the United Nations High Commissioner for Human Rights: International Workshop on Natural Resource Companies, Indigenous Peoples and Human Rights: Setting a Framework for Consultation, Benefit-Sharing and Dispute Resolution (A/HRC/EMRIP/2009/5)
- Report of the United Nations High Commissioner for Human Rights on the outcome of the second annual sectoral consultation of senior company executives and experts (A/HRC/4/99)
- Report of the United Nations High Commissioner for Human Rights on the sectoral consultation entitled "Human rights and the extractive industry" (E/CN.4/2006/92)
- Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights (E/CN.4/2005/91)
- Indigenous peoples' permanent sovereignty over natural resources: final report of the Special Rapporteur, Erica-Irene A. Daes (E/CN.4/Sub.2/2004/30)
- Report of the workshop on indigenous peoples, private sector natural resource, energy and mining companies and human rights, Geneva, 5-7 December 2001 (E/CN.4/Sub.2/AC.4/2002/3)

* See www.un.org/esa/socdev/unpfii for texts of documents listed.

(b) Key recommendations from treaty bodies

- General Recommendation XXIII(51) concerning indigenous peoples, Committee on the Elimination of Racial Discrimination, (CERD/C/51/Misc.13/Rev.4), 18 August 1997. Available at http://www2.ohchr.org/english/bodies/cerd/comments.htm

(c) Relevant publications

- *Embedding Human Rights in Business Practice — A joint publication of the United Nations Global Compact Office and the Office of the United Nations High Commissioner for Human Rights* (2004). The publication offers an analysis of the human rights principles from the perspective of the United Nations, business, academia and civil society. Its main focus is the practical meaning of the principles for companies; it presents four detailed case studies and a policy report on business practice in different industries; available at www2.ohchr.org/english/issues/globalization/business/list.htm
- "The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity — an OHCHR Briefing Paper" (2004).The paper provides a broad overview of the current understanding of what "sphere of influence" and "complicity" mean in the context of the Global Compact's human rights principles http://www2.ohchr.org/english/issues/globalization/business/list.htm

2.1. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Key reports

- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to the Human Rights Council (A/HRC/12/34). The report includes a section on the duty to consult and private-company responsibility
- "Observations on the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama" (A/HRC/12/34/Add.5)
- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90). The report focuses on the impact of large-scale or major development projects on the human rights of indigenous peoples and communities

2.2. Special Representative of the Secretary-General on business and human rights

Key reports

- A bibliography of listing all documents prepared by and submitted to the Special Representative to the Secretary-General on business and human rights as of 23 November 2009 (with links) is available at www.reports-and-materials.org/Ruggie-docs-list.pdf
- Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council (A/HRC/11/13)

3. Global Compact

Key reports

- *Embedding Human Rights in Business Practice II A joint publication of the United Nations Global Compact and the Office of the United Nations High Commissioner for Human Rights*, containing a case study about an Australian bank's work with indigenous people, available in English at www.unglobalcompact. org/newsandevents/news_archives/2008_03_27.html

4. United Nations agencies

United Nations Development Programme

- *Creating Value for All: Strategies for Doing Business with the Poor* (July 2008), available in English, French and Spanish at www.undp.org/gimlaunch/download.shtml
- *Making the Law Work for Everyone*: Volume I, report of the Commission on Legal Empowerment of the Poor (June 2008), available at www.undp.org/legalempowerment/reports/concept2action.html
- *Niger Delta Human Development Report* (July 2006), available in English at http://hdr.undp.org/en/reports/nationalreports/africa
- Beyond the Silencing of the Guns (2004) (prepared by Tebtebba Foundation with support from UNDP), available in English at www.tebtebba.org

International Labour Organization

(a) Guidelines for Combating Child Labour among Indigenous and Tribal Peoples (English, French and Spanish), available at www.ilo.org/indigenous/Resources/Guidelinesandmanuals/lang--en/docName--WCMS_091360/index.htm;

(b) Eliminating discrimination against indigenous and tribal peoples in employment and occupation: a guide to ILO Convention No. 111, available in English, French and Spanish at www.ilo.org/indigenous/Resources/Guidelinesandmanuals/lang--en/docName--WCMS_100510/index.htm.

International Fund for Agricultural Development

- Indigenous Women in Sustainable Development (2004), available in English at www.ifad.org/english/indigenous/index.htm

United Nations Centre for Transnational Corporations

- In the early 1990s, the (former) Centre on Transnational Corporations produced the following series of reports for the Working Group on Indigenous Populations: E/CN.4/Sub.2/AC/4/1990/6 (proposed methodology and draft questionnaire for distribution to indigenous peoples); E/CN.4/Sub.2/1991/49 (preliminary report); E/CN.4/Sub.2/1992/54 (report on the Americas); and E/CN.4/Sub.2/1994/40 (report on Asia and Africa)

World Health Organization

The instruments listed below are not specific to indigenous peoples. However, they are included because they are examples of a United Nations agency seeking to address the behaviour and actions of corporations:

(a) The Framework Convention on Tobacco Control (2003), available in all official languages at the United Nations at www.who.int/fctc/en/;

(b) *The International Code of Marketing of Breastmilk Substitutes*, World Health Assembly resolution 34.22 (1981), available in all official languages of the United Nations at www.who.int/child_adolescent_health/documents/9241594292/en/index.html.

United Nations Environment Programme

Industry Report Cards on Environment and Social Responsibility (2006), available in English at: http://www.unep.fr/scp/publications/details.asp?id=DTI/0827/PA

5. World Bank Group

World Bank

(a) Revised Operational Policy on Indigenous Peoples and Revised Bank Procedure on Indigenous Peoples (2005), both available at http://web.worldbank.org;

(b) "Striking a Better Balance — The World Bank Group and Extractive Industries: The final Report of the Extractive Industries Review", available in English, Spanish and Russian at http://web.worldbank.org;

(c) "Implementation of Operational Directive 4.20 on Indigenous Peoples: An Evaluation of Results" Operations Evaluation Department report No. 25754 (2003), available at web.worldbank.org.

International Finance Corporation

(a) Performance Standard 7: Indigenous Peoples (2006), available in all official languages of the United Nations at www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards;

(b) ILO Convention No. 169 and the private sector: questions and answers for IFC clients (2001), available at www-wds.worldbank.org.

6. Select relevant academic and non-governmental organization reports, articles and tools

- ISO 26000: the International Organization for Standardization (ISO), has decided to launch the development of an international standard providing guidelines for social responsibility. The voluntary guidance standard will be published in 2010 as ISO 26000. For more information, see http://isotc.iso.org/
- Forest Peoples Programme and Tebtebba Foundation, "Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises" (2006), available at www.business-humanrights.org/Links/Repository/970228

- Tebtebba Foundation and Forest Peoples Programme, *Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank* (2003). Additional relevant publications can be found at www.forestpeoples.org/templates/publications_and_reports.shtml#private_sector
- International Network for Economic, Social and Cultural Rights, *Collective Report on Business and Human Rights* (2008), available at www.escr-net.org/actions_more/actions_more_show.htm?doc_id=693486
- International Network for Economic, Social and Cultural Rights, "Human Rights and Extractive Sector Case Studies-2005" (summary of cases with links on the extractive industry and human rights, submitted to the Special Representative of the Secretary-General on Human Rights and Business Expert Meeting on Human Rights and the Extractive Industry, Geneva, 10-11 November 2005): a compilation of case studies, including cases involving indigenous peoples, available at: www.escr-net.org/actions_more/actions_more_show.htm?doc_id=431017&parent_id=431015
- Human Rights Watch, *On the Margins of Profit: Rights at Risk in the Global Economy* (2008), available at www.hrw.org/doc/?t=corporations_pub
- *Oil and Gas Projects in the Western Amazon: Threats to Wilderness, Biodiversity, and Indigenous Peoples*, August 2008, available at www.amazonwatch.org/newsroom/view_news.php?id=1632
- James Anaya, "Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources", *Arizona Journal of International and Comparative Law*, Vol. 22, No. 1 (2005), available at www.law.arizona.edu/journals/ajicl/AJICL2005/vol221/Anaya%20Formatted%20Galleyproofed.pdf
- Rights & Democracy (International Centre for Human Rights and Democratic Development), *Human rights impact assessments for foreign investment projects: learning from community experiences in the Philippines, Tibet, China, the Democratic Republic of the Congo, Argentina and Peru* (2007), available in English and Spanish at www.dd-rd.ca/site/publications/index.php?lang=en
- International Alert, *Conflict-sensitive Business Practice: Guidance for Extractive Industries* (2005) available at www.iisd.org/security/business/conflict.asp
- International Council on Human Rights Policy, *Beyond voluntarism: human rights and the developing international legal obligations of companies* (2002), available at www.ichrp.org/
- Canadian Foundation for the Americas, *Indigenous Governance Indicators for Corporate Social Responsibility: Final Report* (2008), available at focal.ca/pdf/Indigenous%20Governance%20CSR%20May%202008.pdf
- World Conservation Union-International Council on Mining and Metals, *Report of the Roundtable on Mining and Indigenous Peoples Issues* (2005), available at cmsdata.iucn.org/downloads/roundtable_20report_20eng_20final_20feb_2006.pdf

- "Small indigenous minorities of the North: lessons in self-organization and social partnership", Akcenova, O. V., Ph.D. (Sociol.), 2004, 115 pages, www.csipn.ru
- "Taking the interests of small indigenous minorities into account in decision-making regarding exploitation of minerals", Kryukov, V. A., Ph.D. (Econ.), Tokarev, A. N., Ph.D. (Econ.), 2005, 172 pages, www.csipn.ru
- "Rights of indigenous peoples of the North to land and natural resources, effective utilization and joint management", Maksimov, A. A., Ph.D. (Econ.), 2005, 84 pages, www.csipn.ru
- "Indigenous peoples of the North and industrial development. Socio-economic agreements with extraction companies: from conflict to partnership, from philanthropy to development programmes", Sulyandziga, R. V., Ph.D. (Econ.)
- Maksimov, A. A., Ph.D. (Econ.), Krupko, L. O., Borsuk, E. I., 2008, 342 pages, www.csipn.ru
- "Locations of potential conflicts between industrial companies and small indigenous minorities of the North, Siberia and the Russian Far East", Krasnopeev, S. M., Ph.D. (Med.), www.csipn.ru
- International Seminar on Natural Resource Companies, Indigenous Peoples and Human Rights, OHCHR (Geneva, Moscow), Russian Association of Indigenous Peoples of the North (RAIPON), csipn.ru
- Round table on problems of the Evenk hydroelectric station, Final Document, Assistance Centre for Small Indigenous Minority Peoples of the North, Russian Association of Indigenous Peoples of the North, Public Chamber of the Russian Federation, www.csipn.ru
- Publications
  - "Ethnological report: Russian legislation, international standards and the opportunities of small indigenous minorities of the North, Siberia and the Far East", Moscow, 2006
  - "Status of small indigenous minorities of Russia. Legislative instruments", Moscow, 2007
  - "Determination of the extent of losses by users of land and other natural resources in locations of the traditional residence and traditional economic activity of small indigenous minorities of the North, Siberia and the Far East of the Russian Federation. Methodological recommendations", Moscow, 2007
  - "Significance of traditional knowledge for sustainable development of indigenous peoples, handbook on the compilation, documentation and utilization of traditional knowledge for organizing indigenous peoples", Moscow, 2007
  - "Participation of small indigenous minorities of Russia in natural resources management: legislative basis and experience", Moscow, 2008
  - "Co-management organs in the Arctic: the examples of Canada, Alaska and the Scandinavian countries", Moscow, 2008

- "The public ethnoecological council as a model for ecological co-management in regions inhabited by small indigenous minorities of the North, Siberia and the Far East of Russia", Moscow, 2008
- "Formation of territories for traditional natural resource utilization: a practical handbook on legal issues", Moscow, 2008
- "Assessment of the quality of lands which the traditional habitat of small indigenous minorities of the North, Siberia and the Far East of the Russian Federation", Moscow, 2008

- "Batani International Development Fund for Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation: training programme on assessment of environmental impact and the prospects of indigenous peoples", Kautokeino, Norway, September-October 2006; Salekhard, Yamal-Nenets Autonomous Okrug; Second phase of the training programme, Kautokeino, Norway, January-February 2007
- 2007-2008, "Batani" Fund, "Ecological co-management of resource extracting companies, local authorities and small indigenous minorities of the North"
- 2009, Demonstration project on ecological co-management by resource extracting companies, local authorities and small indigenous minorities of the North, Moscow, 2009, www.batanifund.org
- *Library of Indigenous Peoples. List of publications of the Indigenous Peoples Training Centre*
  - 1. Economic and management foundations of the activity of organizations. A handbook for small indigenous minority peoples of the North communities
  - 2. Rights of indigenous peoples of the North to land and natural resources. Effective utilization and joint management
  - 3. Small indigenous minorities of the North: lessons of self-organization and social partnership. Role of small indigenous minority peoples of the North in forming civil society
  - 15. Indigenous peoples and industrial activity. An analysis of agreements
- "The World of Indigenous Peoples — The Living Arctic"
  - No. 17, 2004, O. Murashko, "Programme for the development of East Siberian mineral deposits and indigenous peoples"
  - No. 18, 2005, Y. Yakel, E. Khmeleva, "The right of citizens of Sakhalin to a healthy environment turns out to depend on how the Sakhalin Energy Company reads the Constitution of the Russian Federation"
  - No. 19, 2006, P. Sulyandziga, "Will the peoples of the North survive the construction of trans-continental pipelines?"
  - No. 20, 2007, editorials "Yakutia demands compliance with the law in the implementation of the East Siberia-Pacific Ocean Pipeline System Project in its territory"; "Ukok Plateau: the indigenous peoples of Altai and the backers of the Altai gas pipeline need to find a common language"

- No. 21, 2008, S. Kharyuchi, "Basic challenges facing indigenous peoples in today's Russia"; O. Timofeeva-Tereshkina, I. Kurilova, "The international conference on small indigenous minority peoples and industrial development: legal, economic and political problems and ways of solving them. The experience of Russia and the European Union", O. Murashko, "Lessons of the public ecological study in the protection of the rights of Sahelian's indigenous peoples"

- No. 22, 2009, S. N. Kharyuchi, "The role of the State in harmonizing the industrial development of the North and the sustainable development of small indigenous minorities", N. Y. Dordina, O. Murashko, "Ethno-ecological co-management must become a reality in the North of Russia"

7. Additional resources

(a) General

The Business and Human Rights Resource Centre is a clearing house updated daily with news regarding business and human rights. The website provides information on corporations and indigenous peoples, including specific cases. The site also contains a portal relating to the work of the Special Representative of the Secretary-General on business and human rights (www.business-humanrights.org/);

(b) Natural resources and conflict

The Security Council has adopted several resolutions and requested studies on the issue of natural resources and conflict. A list of key documents in this regard can be found at www.globalpolicy.org/security/natres/docsindex.htm.